INDOLOGY AND LAW

STUDIES IN HONOUR OF PROFESSOR J. DUNCAN M. DERRETT

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OF
PROFESSOR J. DUNCAN M. DERRETT

Edited by

GÜNTHER-DIETZ SONTHEIMER

and

PARAMESWARA KOTA AITHAL

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PREFACE

In a single felicitation volume one can hardly do justice to the vastness and variety of fields in which J. Duncan M. Derrett took an interest and to which he contributed substantially. We hope however, that the present volume will at least reflect some of the ideas which Derrett was concerned with. Unfortunately it has not been possible to invite and to include all the scholars who must have been inspired by Derrett's wide-ranging researches in history, Oriental laws, New Testament, and Western legal system.

The editors originally tried to limit the themes of the Festschrift to Indian topics and within this framework to themes centering on religion and law, the "Oriental legal systems in their own right" and "modernization and law". But, this plan had to be abandoned soon because there was a proliferation of themes when the contributions arrived and as a result, the title INDOLOGY AND LAW has emerged as the most likely common denominator.

This *arpaṇa* is offered to a scholar who in many ways is - to use a somewhat worn but for once justified term - outstanding. Derrett never follows any of those "schools of thought" or short-lived academic fashions which sometimes reflect more on the state of these disciplines in the country of their origin than on the *true* India. His untiring pursuit of the study of Indian history, Indian legal systems and legal thought have put us in a position to appreciate the achievements of India in these fields. Indeed, Sir Henry Maine's famous, but

superficial remarks and his abject observations on the Indian traditional legal culture have been laid to rest by Derrett.[1]

Not premature, facile conceptualization, but exacting and ceaseless toiling have resulted in the vindication of the Dharmaśāstra and Indian legal thought and their establishment as a field of comparative research on an equal basis with any legal system in the world. The bibliography of Derrett's work on India, which corroborates this point, is stupendous and its inclusion enhances the value of the Festschrift considerably.

For Derrett the occupation with India is never only an abstract, theoretical armchair affair. His teaching has inspired many Indian and European law students. His critiques of court decisions are a useful corrective in the development of modern Hindu law, fully and gratefully acknowledged by many Indian students of law, advocates, and judges. They do not fail to see that his relentless criticism is matched by a deep sympathy for India and her well-being in the modern world. Derrett's openess and enthusiasm for every new and important development in the field of Indian studies or for any serious scholarly achievement has been accompanied by an occasional tempestuous and humorous aversion against tolerating nonsense. Thus it is with some diffidence that this Festschrift is offered by the editors.

The increasing difficulties in publishing at the South Asia Institute as elsewhere have made it impossible to get this volume printed as planned. We, however, hope that the book, as it is presented now, will be acceptable. An attempt has been made to standardize the manuscript, but a different transliteration of Sanskrit terms will be found in the indo-

[1] For Sir Henry Samuel Maine and his work see Derrett, J. D. M., "Sir Henry Maine and Law in India, in: *English Historical Review*, April 1959, pp. 43 - 64, repr. in: *Essays in Classical and Modern Hindu Law*, vol. 2, Leiden, 1977, pp. 26o - 275.

logical and legal papers. Thus we have left the simplified, but indologically "incorrect" way of transliterating Indian terms in the papers on modern law, as this mode of transliteration is firmly rooted in case law reports and writings on modern Hindu law.

We owe thanks to many persons who through their contribution and cooperation have helped to make this volume possible. We are particularly grateful to Dr. P. Hardy of the School of Oriental and African Studies, London, for his constant advice and moral support, to Mrs. H. Werny and the assistants of the Department of Indology, South Asia Institute, Heidelberg, who managed to bring the Festschrift into a proper shape, and to Mrs. D. König for checking and typing the Bibliography.

Günther-Dietz Sontheimer
Parameswara K. Aithal

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Part I

HISTORY

KALIYUGA AND TIME CAPSULE

Friedrich Wilhelm

1. Kaliyuga

The Hindu theory of the four ages (yugas) has been expounded at great length in the *Purāṇas* and *Mahābhārata*. Here we find detailed descriptions of the four yugas (Kṛta, Tretā, Dvāpara and Kali), which gradually deteriorate till a new cycle recommences with the best age, the Kṛtayuga. A thousand such cycles are called one Kalpa, which is said to constitute one day (or one night) of the god Brahman. We live in the last and worst of the four ages, the Kaliyuga, which lasts 432.000 years in all and is said to have begun on Friday, 18 February 3102 B.C.[1] The deterioration is seen in terms of moral decay, but also in the decrease of human longevity. According to Manu I, 83 men lived 400 years in the Kṛta age, but in each of the succeeding ages their life is lessened by one quarter (i.e. 400, 300, 200, and 100 years). In Manu I, 81, 82 the four ages are compared with a cow which walks on four feet in the Kṛtayuga and finally rests on one foot in the Kaliyuga. This simile is quoted by Sonnerat, *Voyage aux Indes*[2]. Another early reference to the yuga theory in the west is

[1] This calculation is based on the Aihole inscription which "appears to equate the beginning of Kali with the Bhārata war and states that 3735 years (expired) from the Bhārata war are equal to 556 years of the *śaka* era." (P.V. Kane, *History of Dharmaśāstra*, Vol.III, Poona, 1946, p.896).

[2] *Voyage aux Indes orientales et à la Chine*, Paris, 1782. I refer to one of Sonnerat's German editions: Frankfort and Leipzig, 1784, p. 15o.

made by N. B. Halhed, *A Code of Gentoo Laws*, London, 1776, p. XXXVIII f., who writes "Collee Jogue" for Kaliyuga.

The names of the ages signify "throws in gambling, Kṛta being the most lucky and Kali the most unlucky"[3]. Later on Kali, the most unlucky throw in gambling, was personified as the demon of gambling (by which Nala was possessed). This demon Kali, however, remained a rather colourless figure in Hindu mythology and iconography. It is presumably for this reason that two modern writers wrongly relate the goddess Kālī with the Kaliyuga: Günter Grass in his "*Der Butt*" (The Flounder)[4] and Allen Ginsburg in his "*Indian Journals*"[5]. Grass writes: "The goddess Kali is said to be the female aspect of the god Shiva. At her caprice she knocks down what hardly stands. We live in her age." In Ginsburg's poem *Durga-Kali - Modern weapons in her hands*, dated May 8, 1962, the first line runs: "Kali Yuga 432,000 years - Deity black". The modern India traveller may come across this unjustified identification when he consults unqualified local guides who might well have been the source of Grass' and Ginsburg's misunderstanding. The assignment of the bloodthirsty goddess to the Kaliyuga would answer much better to the popular imagination.

The following passage from Wilson's translation of the *Viṣṇu-purāṇa*, Book VI, Chapter 1[6] maps out the disastrous consequences of the Kaliyuga:

> "The observance of caste, order, and institutes will not prevail in the Kali age, nor will that of the ceremonial enjoined by the Sāma, Rik, and Yajur Vedas. Marriages in this age will not be conformable to the ritual, nor will

[3] Kane, op.cit., p.887.

[4] Darmstadt, 1977.

[5] San Francisco, 1970.

[6] W.Kirfel, *Zur Eschatologie von Welt und Leben*, Bonn, 1959, edited the chapters here quoted together with a German translation.

the rules that connect the spiritual preceptor and his disciple be in force. The laws that regulate the conduct of husband and wife will be disregarded, and oblations to the gods with fire no longer be offered. ... Women will follow their inclinations, and be ever fond of pleasure. Men will fix their desires upon riches, even though dishonestly acquired. No man will part with the smallest fraction of the smallest coin, though entreated by a friend. Men of all degrees will conceit themselves to be equal with Brahmans. Cows will be held in esteem only as they supply milk. ... The women will be fickle, short of stature, gluttonous: they will have many children, and little means: scratching their heads with both hands, they will pay no attention to the commands of their husbands or parents: they will be selfish, abject, and slatternly: they will be scolds and liars: they will be indecent and immoral in their conduct, and will ever attach themselves to dissolute men. Youths, although disregarding the rules of studentship, will study the Vedas. Householders will neither sacrifice nor practise becoming liberality. Anchorets will subsist upon food accepted from rustics; and mendicants will be influenced by regard for friends and associates. Princes, instead of protecting will plunder their subjects; and, under the pretext of levying customs, will rob merchants of their property. In the Kali age every one who has cars and elephants and steeds will be a Rājā: every one who is feeble will be a slave. Vaiśyas will abandon agriculture and commerce, and gain a livelihood by servitude or the exercise of mechanical arts. Śūdras, seeking a subsistence by begging, and assuming the outward marks of religious mendicants, will become the impure followers of impious and heretical doctrines.

Oppressed by famine and taxation, men will desert their native lands, and go to those countries which are fit for coarser grains. The path of the Vedas being obliterated, and men having deviated into heresy, iniquity will flourish, and the duration of life will therefore decrease. ..."

This gloomy picture of a decaying world is all the more impressive as it is in some ways in line with the view of the cultural pessimist in the West. At any rate it looks more realistic than the image of a golden age, be it in the remote past or in the far future. In addition to this disaster report the *Viṣṇupurāṇa* VI, 2 surprisingly pinpoints three positive aspects of the Kaliyuga. The context is as follows: In order to settle a dispute the sages approached Vedavyāsa who was half immersed in the waters of the Ganges. He dived three times and made a statement each time he emerged:

1. *śūdraḥ sādhuḥ kaliḥ sādhuḥ*, "The Śūdra is good, the Kali (age) is good."
2. *sādhu sādhu śūdra dhanyo 'si*, "Well, well, Śūdra, you are fortunate."
3. *yoṣitaḥ sādhu dhanyās tās tābhyo dhanyataro 'sti kaḥ*, "Well, o women, they are fortunate. Who is more fortunate than they?"

Vedavyāsa comments on his amazing remarks with the following words (transl. Wilson):

"The fruit of penance, of continence, of silent prayer, and the like, practised in the Krita age for ten years, in the Treta for one year, in the Dvāpara for a month, is obtained in the Kali age in a day and night: therefore did I exclaim, 'Excellent, excellent, is the Kali age!' That reward which a man obtains in the Krita by abstract meditation, in the Treta by sacrifice, in the Dvāpara by adoration, he receives in the Kali by merely reciting the name of Keśava. In the Kali age a man displays the most exalted virtue by every little exertion; therefore, pious sages, who know what virtue is, I was pleased with the Kali age. Formerly the Vedas were to be acquired by the twice-born through the diligent observance of self-denial; and it was their duty to celebrate sacrifices conformably to the ritual. Then idle prayers, idle feasts, and fruitless ceremonies, were practised but to mislead the twice-born; for although observed by them devoutly, yet, in con-

sequence of some irregularity in their celebration, sin was incurred in all their works, and what they ate, or what they drank, did not effect the fulfilment of their desires. In all their objects the twice-born enjoyed no independence, and they attained their respective spheres only with exceeding pain. The Śūdra, on the contrary, more fortunate than they, reaches his assigned station by rendering them service, and performing merely the sacrifice of preparing food, in which no rules determine what may or may not be eaten, what may or may not be drunk. Therefore, most excellent sages, is the Śūdra fortunate. Riches are accumulated by men in modes not incompatible with their peculiar duties, and they are then to be bestowed upon the worthy, and expended in constant sacrifice. There is great trouble in their acquisition, and great grief for their loss. Thus, eminent Brahmans, through these and other sources of anxiety, men attain their allotted spheres of Prajāpati and the rest only by exceeding labour and suffering. This is not the case with women: a woman has only to honour her husband, in act, thought, and speech, to reach the same region to which he is elevated; and she thus accomplishes her object without any great exertion."

The whole passage is baffling enough. The obedience of the Śūdras to the twice-born is emphasized whereas the report on the Kaliyuga blames the Śūdras for improper and heretical behaviour. In a similar way the obedience of women towards their husbands is praised, but in the description of the Kaliyuga we have read just the contrary: the fickle and dissolute character of women is delineated. Should we interpret Vedavyāsas assertions as a form of grim humour to lash the decay of moral standards? The Purāṇas, however, cannot possibly be expected to display sarcastic spirit. The mentioning of Śūdras and women in this context may perhaps be taken as a somewhat provocative and sophisticated attempt to draw the attention to the fact that the Kaliyuga clearly had virtues which the previous yugas had not, viz. the extraordinary abridgement of the ways and means which lead to salvation ("by merely re-

citing the name of Keśava"). The *Bhāgavatapurāṇa* XII, 3, 51 and 52 stresses this point, too, but has no reference to Śūdras and women:

> "Kali is certainly the store-house of all evils. But o King, there is one very great virtue and a good point in that age, inasmuch as by singing the name and the glory of Śrī Kṛṣṇa, that person is freed from all attachments and attains to the highest region (Vaikuṇṭha). (51) What one achieves by meditating upon Lord Viṣṇu in the Kṛta age, by performance of sacrifices in the Tretā age, by worship and service of the Lord in the Dvāpara age, a person attains that in the Kali age by chanting the name of Hari." (52)[7]

In *dharma* literature one aspect of the Kaliyuga plays an important role: numerous practices which were current in former ages are now to be avoided in the Kali age, i.e. *kalivarjya*. These practices forbidden in the Kaliyuga include the killing of a cow in sacrifice, human sacrifice, horse-sacrifice, offering of meat in *śrāddha*, perpetual student-hood, sea travel, remarriage of widows, *niyoga* etc.[8] These amendments are partly attributed to the fact that people became sinners in the Kali age, but on the other hand these new rules were regarded as an asset. For Kane these amendments even refute the western idea of the "unchanging east."[9] The reason for this *kalivarjya* theory is indicated by Derrett: "The commencement of this theory may have been a refusal to accept as binding legal precedents certain apparently immoral acts which the admired gods, heroes and legendary sages indulged in."[10]

[7] Ancient Indian Tradition and Mythology, Vol. 11, *The Bhāgavata Purāṇa*, Part V, translated and annotated by Ganesh Vasudeo Tagare, Delhi, 1978.

[8] Kane (op.cit., p. 930ff.) enumerates 55 Kalivarjyas.

[9] Kane, op.cit., p.967.

[10] J.D.M. Derrett, *Religion, Law and the State in India*, London, 1968, p. 88.

The epitomes (*saṃkṣepa*) of the legendary *trivarga* treatise in 100.000 chapters were occasioned by men's shorter lifetime, but they are respected as valuable texts.[11]

Throughout the ages there has never been an equal and gradual deterioration but stupendous oscillations, which becomes quite obvious when we reflect for instance on the repeated world crises which were overcome by the incarnations of Viṣṇu. We may refer for example to the extermination of the Kṣatriyas by Rāma Jāmadagnya. This event - said to have taken place between the Tretā and Dvāpara ages[12] - would better fit in a later phase of the Kaliyuga, whatever interpretation we give to it. If we interpret this massacre as a good deed we should wonder why the Kṣatriyas could become such a threat even before the advent of the Kaliyuga. The eventful world of the myths is in a way incompatible with the conception of gradual decay which must be a later supplement.

This conception is incompatible, too, with the vicissitudes of human history. The strict belief in a gradual decay would amount to fatalism. Given this, no good can be expected from the future and increasing evil is inevitable. For kings and politicians such a dogmatic point of view must be virtually paralyzing. It is small wonder that the best known of all political treatises, the *Arthaśāstra* of Kauṭilya alias Kauṭalya, does not take into consideration the four-yuga doctrine. The *Arthaśāstra* sets forth its philosophy of success taking for granted that only fate (*daiva*), but not the particular conditions of the Kaliyuga, interferes with the work of man (*mānuṣya*). Also the ruthlessness of political scheming is not motivated by the depravity of the Kaliyuga.

[11] See F. Wilhelm, "*The Quotations in the Kāmasūtra of Vātsyāyana*" in *Indologica Taurinensia* (Festschrift L. Sternbach) Vol. VII (1979), Turin, 1980, p. 401 f.

[12] According to Pargiter, *Ancient Indian Historical Tradition*, London, 1922, p. 177, it belonged to the interval between the Kṛta and Tretā ages.

In *Arthaśāstra* I, 13,5[13] we read that people oppressed by the law of the jungle (Sanskrit: *mātsyanyāya*, i.e. the rule of the fishes) made Manu Vaivasvata their king. This statement diametrically opposes the notion that there were better conditions of life in the past.

The political implications of the four ages are examined, however, in the *Mahābhārata* where we read in XII, 70, 26f. (Critical Edition):

kṛtasya karaṇād rājā svargaṃ atyantam aśnute/
tretāyāḥ karaṇād rājā svargaṃ nātyantam aśnute//
pravartanād dvāparasya yathābhāgam upāśnute/
kaleḥ pravartanād rājā pāpam atyantam aśnute//

"If the king makes the Kṛta age he obtains heaven forever; if the king makes the Tretā age he obtains heaven for a limited time; if he establishes the Dvāpara age he obtains according to his share; if he establishes the Kali age he obtains evil forever."

And in *Mahābhārata* XII, 70, 6 Bhīṣma expounds to Yudhiṣṭhira:

kālo vā kāraṇaṃ rājño rājā vā kālakāraṇam/
iti te saṃśayo mā bhūd rājā kālasya kāraṇam//

"Whether time makes the king or the king makes the time, have no doubt about this: the king makes the time."

These Ślokas try to overcome the fatalism of the four-yuga doctrine by emphasizing the responsibility of the king. The king is not only made responsible for natural calamities, but it is up to him in which age we live.

Several Ślokas in *Mahābhārata* XII, 70 bring into prominence the influence of the science of politics (*daṇḍanīti*). If the king applies *daṇḍanīti* properly he creates Kṛta, if for three quarters Tretā, if only half Dvāpara and if he abandons *daṇḍanīti* he creates the Kaliyuga.

In Manu IX, 302 the ages are made dependent on the King's activity: Kali comes forth when he is asleep, Dvāpara when he is awake , Tretā when he is willing to act and Kṛta when he is

[13] F. Wilhelm, *Politische Polemiken im Staatslehrbuch des Kauṭalya*, Wiesbaden, 1960, p. 79f.

acting. This interpretation underpins the status of the king, but leaves out of account the eventuality of acting badly.

Indian politicians have to this day never felt disconcerted by the fatalism of the four-yuga doctrine.[14] Occasionally, however, Indian scholars take this mythological theory as matter of fact as, e.g. R. Siddhantashastree in his book "*History of the Pre-Kaliyuga*", Delhi, 1978. Saletore establishes a genealogy of *Arthaśāstra* teachers with an average lifetime of 1oo years in his book "*Ancient Indian Political Thought and Institutions*", London, 1963, p. 44.

We would finally mention the large group of Indian inscriptions which deal with the validity and duration of donations, and we quote here a few examples from J.F. Fleet, "*Inscriptions of the early Gupta Kings and their Successors*", Calcutta, 1888:

No. 81: *idaṃ śāsanaṃ sthiram ā-candra-tārakam.* "This charter shall endure firmly as the moon and the stars."

No. 18: "As long as (the god) Īśa wears a mass of tawny matted locks ..., and (as long as) (the god) Śārṅgin (carries) a garland of lovely waterlilies on his shoulder ... so long may this noble temple endure for ever!"

No. 37: "As long as (the god) Viṣṇu bears the radiant (goddess) Śrī upon (his) breast ..."

No. 40: "to be enjoyed as long as the world endures."

None of these Gupta inscriptions pays regard to the Kaliyuga in which they were engraved. References to the Kaliyuga seem to be rare in ancient Indian inscriptions. We have *āva kapam (yāvat kalpam)*, "up to the end of the Kalpa" in the Major Rock Edicts of Aśoka. The evil effects of Kaliyuga are occasionally mentioned in inscriptions, but with regard to donations one claims a longer, nearly everlasting validity.

14 See F. Wilhelm, *Fischer Weltgeschichte*, Vol.17. Indien, p.122f.

"As long as sun and moon endure"[15] or "As long as moon and stars endure" are current formulas which virtually guarantee perpetuity[16] and overcome the notion of the malign Kali-yuga, this precarious age, which will come to an end c. 429.000 A.D.

2. Time Capsule

The ancient Indian inscriptions which were destined for posterity found a modern continuation in the Indian Nehru and Time capsules of the 1970-s. On May 27th, 1972 the Nehru Capsule was embedded in Delhi, and on August 15th, 1973 the so-called Time Capsule. These events took place under the government of Indira Gandhi. According to the *Hindustan Times Weekly* of May 28th, 1972 the Nehru Capsule weighs 125 kg and is made of pure electrolysed copper. This capsule was lowered into a nine-metre deep well at Shanti Vana. It contains articles on recent political developments in India, recordings of Nehru's "Tryst with Destiny" speech, excerpts from his Azad memorial lecture on "India today and tomorrow", and a passage from the "Discovery of India" read out by Indira Gandhi. The capsule also contains a two-reel film on Nehru's strife for Indian independence.

[15] Sun and moon appear as symbols of eternity in Indian art, e.g. on the herostones of Western India. See. R. Thapar, "Elegy in Stone. In memory of the sati and the hero", in: *The India Magazine*, April 1982, pp. 12 - 19.

[16] H. Kulke, "Geschichtsschreibung und Geschichtsbild im hinduistischen Mittelalter", in: *Saeculum*, XXX/1 (1979), p. 110, points out a claim to eternity in temple annals where the cyclic view is replaced or expanded by the eternal presence of the temple god.

As it is a "capsule for posterity" brickwork to the well "would provide the lead to future archaeologists"[17]. (*The Times of India*, May 28th, 1972).

The Time Capsule of 1973[18] was lowered into a well outside the main entrance of the Red Fort in Delhi. It has been named the Independence Silver Jubilee Time Capsule to commemorate twenty-five years of Indian independence. The contents of the Time Capsule (details below) roused controversies in the Lok Sabha and in the Rajya Sabha. In November 1977 the Ministry of Education, Social Welfare and Culture under the government of Morarji Desai constituted a Committee of Members of Parliament to retrieve the Time Capsule. The work on the excavation of the Time Capsule started on November 28th, 1977 and on December 8th, 1977 this capsule was taken out of the well. It had the following inscription:

> "This Time Capsule was embedded at Red Fort, New Delhi by Shrimati Indira Gandhi, Prime Minister of India on the Fifteenth day of August 1973 to mark the completion of twenty-five years of India's independence."

The Time Capsule was kept in a special box with six locks and was taken in a police pick-up van with armed guards to the Tis Hazari Treasury for safe custody. On December 20th, 1977, it was transferred with armed guards on a secret route to the National Physical Laboratory where it was opened in the presence of high officials. All items were taken over by the Ministry of Education for safe custody, viz.:

[17] The millenarian dimension was disclosed even more emphatically in *The Times of India*, May 28th, 1972:"Future archaeologists may find the capsule as useful as are Aśoka's rock edicts to present-day scholars. In fact, the capsule and its contents, designed to remain intact for at least a millenium may be much more useful in unlocking the mysteries of our times a 1.000 years hence."

[18] I feel very much obliged to Dr. J. Gehl, formerly at the Embassy of the Federal Republic of Germany, New Delhi, for his kind information on this subject.

1. 10.000 word account both in English and Hindi of important aspects of History of India from 15.8.1947 to 15.8.1972, calligraphed on parchments (eight pages in Hindi and nine pages in English and one page blank).
2. Eight Copper plates with writings and illustrations.
3. Three copper stampings.
4. Coins - 10 Rs. and 50 paise - and 12 stamps issued on 15.8.1972 and 26.1.1973 on the occasion of 25th Anniversary of Independence (eight stamps in Hindi and four in English) 4 stamps issued on 13.4.1973 "Homage to Martyrs".
5. Micro-film of the Constitution of India along with preamble in all the National Languages.
6. Micro-film of the project of Bhakra Nangal Dam.
7. 13 portraits etched in half tone on copper plates.
8. Small models of i) Vijayanta Tank ii) Ishapur Rifle iii) Bharat Earth Mover.

The contents of the three Copper Stampings No.3 are as follows:

1. Copper Stamping bearing No. 2XJE10079T1 contained the speech of Dr. S.Radhakrishnan delivered by him in the Central Hall of Parliament on 14.8.1947 which is of approximately 13 minutes duration.
2. Copper Stamping bearing No. 2XJE10080T1 contained 'Tryst with Destiny' speech of Shri Jawaharlal Nehru both in English and Hindi which is of approximately 11 minutes duration.
3. The Copper Stamping bearing No. 2XJE10081T1 contained (a) Vande Mataram sung by Pt. Onkar Nath Thakur which was of approximately 8 1/2 minutes duration; and (b) Swearing in of the Members of Constituent Assembly of approximately 4 1/2 minutes duration.

On April loth, 1978, the Education Minister laid on the Table of the House the Report of the Committee of Members of Parliament and criticized in sharp terms the contents of the Time Capsule, especially the account of the history of India: "The entire account appears to be insipid, un-

balanced and jejune. It looks like a command performance with the sole object of projecting how the governments of the times were continuously successful in carrying the nation forward, with no light thrown on the shortcomings that existed, the challenges that had to be met and the leeway that had to be made up."[19] A few inaccuracies in the "calendar of events" are lashed as "glaring mistakes". According to this report this calendar "looks like a catalogue of haphazardly collected captions from popular year books." As a specimen we quote here the data of the first year from the "calendar of events":

"1947

Asian Relations Conference in Delhi.
British Parliament passes Indian Independence Act.
Diplomatic relations with USSR.
Mountbatten replaces Wavell as Viceroy.
Congress accepts Partition.
August 14-15 midnight; Nation becomes free.

[19] The Report criticizes in particular the fact that there is only one sentence in the account which makes mention of India's struggle for freedom by saying that "it was led since 1920 by Mahatma Gandhi who believed in non-violence." The Report comments: "Apart from this one instance where the name of the Father of the Nation is mentioned, he does not find a place anywhere else." Moreover, the Report complains that there is no mention of some prominent leaders: "An 'Independence' time capsule ought to have said something about the role of the early pioneers in the struggle for freedom, the Jalianwala Bagh massacre, the non-cooperation movement, the civil disobedience, the August 1942 struggle, etc. The document does now and then mention the secular and socialist character of the Constitution but there is no mention of those great leaders of different communities who played a very prominent role in fighting for a secular nation. One would, for example, expect a brief mention of Shaheed Bhagat Singh, Lala Lajpat Rai, Netaji Subhas Chandra Bose and the Indian National Army, Dr. Shyama Prasad Mukherjee, Maulana Abul Kalam Azad, Hakim Ajmal Khan, Rafi Ahmed Kidwai, Asaf Ali, Dr. B.R. Ambedkar, C. Rajagopalachari, Jai Prakash Narayan and several others."

Pakistan forces invade Kashmir.
Kashmir accedes to Indian Union.
Indian Army marches to defend Kashmir.
Overseas Communication Service taken over by Government.
Millions migrate from Pakistan.
Refugee camps opened.
Jai Hind series of stamps issued."

In a certain way both "capsules for posterity" are antedated by many inscriptions of ancient India which hand down for posterity the glorious deeds of kings. Compared to such inscriptions, however, Indira Gandhi's account and calendar look like matter-of-fact history. The measures taken by the government of Desai against the Time Capsule embedded by the former Prime Minister Indira Gandhi reveal a great animosity against the preceding government, and the Congress Party suspects an act of political malice on the part of the Janata Party. With the Congress Party back in power the "question of reburying the capsule has arisen."[20]

The West with its one-way view of history has always been keen on posthumous glory and has its capsules for posterity, too. We can possibly trace their origin to our foundation ceremonies where certain documents were laid down together with the foundation stone to remind a distant future of this particular period. Nowadays we develop intergalactic ambitions and send messages to the stars. In 1974 a radio signal was transmitted from Puerto Rico to reach the Hercules star cluster in 25.000 years. If there are receivers who know how to decode it they will then find a pictogram which gives information of the earth and the earthlings. With Voyager 1 launched aboard Titan 3 Centaur a copper record (with music, greetings in many languages, sounds of animals etc.) is on its long way to the Milky Way Galaxy. In 1981 Soviet scien-

[20] T. Fishlock, "Indian time capsule hides bone of contention", in *The Times*, London, Febr. 7th, 1981: "And, given the Indian love of argument, there would always be the strong possibility that, once reburied, the capsule would be dug up again and worried like a well-loved bone."

tists are beaming intergalactic radio signals to outer space, the closest addressee being ten light years away. Science fiction is the mythology of the modern world, but science fiction is thrown into the shade by science.

The calculation in light years introduced by western astronomers reminds somehow of the equation of 360 human years with one divine year and of a day of Brahman with one Kalpa. in the West the discrepancy between time measured and time introspectively perceived has occupied the minds of philosophers like Henri Bergson and the imagination of poets like Rudyard Kipling:

"Cities and Thrones and Powers
Stand in Time's eye,
Almost as long as flowers,
Which daily die ..."

P.S. I wrote this paper whilst a Visiting Fellow at Wolfson College, Oxford, and I want to thank Professor Richard Gombrich for his scholarly advice.

THE ITINERARY OF IAMBULUS - UTOPIANISM AND HISTORY

Franz Ferdinand Schwarz

Der wache Traum von etwas speist sich überall
aus dem, was vermißt wird.
E. Bloch, Verfremdungen II, Frankfurt 1964, 181.

1. THE SUBJECT

In the following discussion we will deal with a subaspect of the expansive *Iambulus*-complex[1]; that is to say that we will try to show that there exist, behind the hinted-at itinerary of the Hellenistic Utopian Iambulus some possibilities of a geographical and historical association by which we

[1] Cf.K.J.Heinisch, *Der utopische Staat*, Reinbeck b. Hamburg, 1960, E.Ch.Welskopf, "Entwicklungsstadien und Probleme der Utopie im Altertum", *Wiss. Ztschr.* Humboldt-Univ.Berlin, Ges.u.sprachw.R.XII, 1963, 195f., M.Simon, "Hellenistische Märchenutopien", ibid, 237-43, M.I.Finley, "Utopianism Ancient and Modern", in: *The Critical Spirit, Essays in Honour of H.Marcuse*, Boston, 1967, 3-20, E.Bloch, *Das Prinzip Hoffnung* II, 2nd edn., Frankfurt, 1968, 566ff., H.Freyer, "Die Gesetze des utopischen Denkens", in: A.Neusüss (ed.), *Utopie. Begriff und Phänomen des Utopischen*, Neuwied Berlin, 1968, 299-312, H.Braunert, *Utopia. Antworten griechischen Denkens auf die Herausforderung durch soziale Verhältnisse*, Kiel, 1969, B.Kytzler "Utopisches Denken und Handeln in der klassischen Antike", in: R.Villgrad F.Frey, ed., *Der utopische Roman*, Darmstadt, 1973, 45-68, H.Flashar, "*Formen utopischen Denkens bei den Griechen*", *IBK* 3, 1974, R.Müller, *Zur sozialen Utopie im Hellenismus*, Veröff. d. Zentralinst. f. Alte Gesch. u.

are warned to accept Iambulus' information only as a "Dichtung".[2] For that purpose we will shortly examine the geographical knowledge of Sri Lanka in the age of the Mauryas and the subsequent time by interpreting some selected old and Middle Indian texts; and the results of this investigation we will use to elucidate the Hellenistic idea of the Southeast. In addition to that we will reflect on the structure and the geographic-historical meaning of the Iambulus excerpts. We confess with gratitude that we are greatly indebted to Professor J. D. M. Derrett's[3] studies and research on the cultural and historical backgrounds of Thomas More's 'Utopia'.

2. AŚOKA

To understand to which extent *Taprobane*, the ancient *Śrī Laṅkā*, was a reality of the geographical and cultural knowledge of the third and second centuries B.C. we have to get an insight into the old Indian literature. By doing so it can be demonstrated that Sri Lanka was regarded as an entity which was at that time taken into account not only in the East but also in the Hellenic West.

1 (cont.)
Arch. Akad. Wiss. DDR, Berlin, 1975/7, 277-86, H.Swoboda (ed.), *Der Traum vom besten Staat*, 2nd. ed., München, 1975, J.Ferguson, *Utopias of the Classical World*, London, 1975, L.Giangrande, "Les utopies hellénistiques", *Cahiers des Ét. anc.Montréal* 5, 1976, 17-33, L.Bertelli, "Il mondo della società rurale nell' utopica greca", *Pens. polit.*9, 1976, 183-208, R.Ahrbeck, *Frühe Utopisten. Morus, Campanella, Bacon*, Köln, 1977, R. Müller, "Sozialutopien in der Antike", *Das Altertum* 23, 1977, 227-33, W.Fauth, "Utopische Inseln in den 'Wahren Geschichten' des Lukian", *Gymn.*86, 1979, 39-58.

2 Cf. C.Schneider, *Kulturgeschichte des Hellenismus* I, München, 1967, 824.

3 Cf.esp. "Thomas More and Joseph the Indian", *JRAS*, Apr.1962, 18-34, "Gemistus Plethon, the Essenes, and More's Utopia", *Bibl.d'Hum.et Ren.*27, 1965, 579-606, "Social and Political Thought and Institutions", in: A. L. Basham (ed.), *A Cultural History of India*, 2nd edn., Oxford, 1975, 125.

Even if the Graeco-Roman antiquity has preserved far more and more complete documents on India than the Indian did on the West, we have nevertheless to refer to some passages in old Indian literature by which we are informed about the Graeco-Roman world, a fact very often neglected. Of course epigraphical material, the epic poetry (Mbh., Rām.), the Purāṇas, the drama, the Śāstras, the grammarians (Pāṇini, Patañjali), the literature of the Jainas and the Buddhists, all these documents give an account of the *Yavanas*, the *Yonas*, respectively the *Yonakas*,[4] by whom later on were also known Persians, Arabs, western foreigners, but especially for ages the Greeks.[5] Particularly if we consider this fact, we can understand the value of documents like Aśoka's inscriptions, the KA, the Miln, and the Pāli Chronicles, which all hint at the occident.

It is very well known that "Aśoka was the first ruler in ancient India who realized the importance of Buddhism in consolidating the empire and pursuing the policy of strict centralisation".[6] Therefore Aśoka's inscriptions are also acquainted with the western regions, with Syria, Macedonia, Cyrene, and

4 Cf. the important study of P.Meile, "Les Yavanas dans l'Inde Tamoule", *Mél.As.*1940-41, 85-123, further A.Barooah, *Ancient Geography of India*, Assam, 1971, 31f., B.C.Law, *Tribes in Ancient India*, 2nd edn., Poona, 1973 153-57, S.Chattopadhyaya, *The Achaemenids and India*, 2nd edn., New Delhi, 1974, 37-41, M.Choudhury, *Tribes of Ancient India*, Calcutta, 1977, 53f., F.F.Schwarz, "Pliny the Elder on Ceylon", *JAH* 8, 1974, 41, fn. 129, Schwarz, "Invasion und Résistance. Darstellungsmöglichkeiten in der Alexanderliteratur" *GB* 9, 1980, 82 fn. 11.

5 Cf. S.Lévi, *Quid de Graecis veterum Indorum monumenta tradiderint*, Paris, 1980, W.Geiger, *Culture of Ceylon in Mediaeval Times*, Wiesbaden, 1960,109f..

6 Cf. G.M.Bongard-Levin, "Some Basic Problems of Mauryan India", in: J.Reychmana (ed.), *Księga pamiątkowa ku czi E.Słuszkiewicza*, Warshaw, 1974, 46. Referring to the extent of his empire cf. S.Chattopadhyaya, *Bimbisāra to Aśoka*, Calcutta, 1977, 117-26.

Epirus (R.E. II 93 sq., V 103, XIII 128, 130 Bloch);[7] they show a lively activity of ancient Indian diplomacy with the neighbouring states.[8] Under the direction of Aśoka all the relations of India to the Hellenistic kingdoms were enlarged and cultivated, relations, which started in Greek literature with Megasthenes [9] and were carried on by Daemachus of Plataeae.[10] And in respect of the fact that Aśoka's XIIIth rock-edict mentions Ptolemaeus (*Tulamaya*) it seems to be conceivable that a certain Dionysius (cf. Plin.n.h.VI 58) acted as an ambassador of Ptolemaeus II Philadelphus at Aśoka's court in Pāṭaliputra.[11]

[7] Cf. A.C.Woolner, *Aśoka*. Text and Glossary I-II, Calcutta, 1924, R.Basak, *Aśokan Inscriptions*, Calcutta, 1959, L.Alsdorf, "Zu den Aśoka-Inschriften", in: E.Waldschmidt (ed.), *Indologen Tagung* 1959, Göttingen, 1960, 58-66, J.Bloch, *Les inscriptions d'Asoka*, Paris, 1950, D.C.Sircar, *Inscriptions of Aśoka*, 2nd edn., Delhi, 1967, F.F.Schwarz, "Die Griechen und die Maurya-Dynastie", in: F.Altheim-R.Stiehl (ed.), *Geschichte Mittelasiens im Altertum*, Berlin, 1970, 307-09, U.Schneider, *Die großen Felsen-Edikte Aśokas*, Wiesbaden, 1978, D.C.Sircar, *Aśokan Studies*, Calcutta, 1979, 1-49, 113-22.

[8] Cf. F.F.Schwarz, "Ashoka Piyadassi. Ein Höhepunkt der Menschheitsgeschichte", *AHS* 18, Wien, 1969, 192-97, H.Humbach, "Indien und Ostiran zur Zeit des Aśoka", *AAHung* 19, 1971, 53-58, F.Altheim-R.Stiehl, "Die Handelsstraße von Lagmān nach Tadmor (Die neue aramäische Inschrift Aśokas aus Lagmān)", *Klio* 54, 1972, 61-66, G.Djelani Davary-H.Humbach, "Eine weitere aramäo-iranische Inschrift der Periode des Aśoka aus Afghanistan", *Abh.Mainz*, 1974/1, 3-16, P.H.L.Eggermont, "India en de hellenistische rijken. Totaalbeeld van een matschappijtussen ca.550 - ca.150 v.Chr.", *Klio* 8, 1978, esp. 150ff..

[9] His information is confirmed in many respects by Aśoka's inscriptions (cf. G.M.Bongard-Levin, *Studies in Ancient India and Central Asia*, Calcutta, 1971, 109-22).

[10] Cf. F.F.Schwarz, "Daimachos von Plataiai. Zum geistesgeschichtlichen Hintergrund seiner Schriften", in : R.Stiehl-H.E.Stier (ed.), *Beiträge zur Alten Geschichte und deren Nachleben* I, Berlin, 1969, 293-304.

[11] Cf. Schwarz, "Die Griechen und die Maurya-Dynastie", 299.

Besides all this Asoka's Greek insciptions make it evident that the Indian emperor was very interested in the Hellenistic culture and of course economy.[12] But also South-India and Ceylon occur within the diplomatic and missionary horizon of the great Mauryan ruler.

Straight at the beginning of the second rock-edict (II 93 sq. Bloch) it is confirmed that all over the (conquered) realm (*vijita*) of Aśoka exist two kinds of medical care and control (skt. *cikitsā* = therapy), i.e. one for the benefit of human beings and one for that of animals (II 94 Bloch: *manussacikissā cā pasucikissā cā*, K.). But there were not only such institutions within the Mauryan kingdom, they were also introduced into the neighbouring countries (II 93 Bloch : *praccaṃtesu*, G.;cf. skt. *pratyantāḥ* [borderpeople]) such as the Coḷas, the Pāṇḍyas, the Satyaputras, the Keralaputras as far as to Tāmraparṇī (*Taṃbapaṃni*, K.) ; and furthermore into the realm of the Greek king Antiochus (*Antiyoka*) and beyond that into the realms of those kings who were the neighbours of this Antiochus.[13]

Therefore Aśoka speaks of the neighbouring states in South India and in doing so he starts with the Coḷas [14] on the southeast coast and adds the adjacent Pāṇḍyas [15] in the south; afterwards he refers, in the west, to the Satyaputras [16] of the interior region and at last to the

[12] Cf. G.Pugliese Carratelli, "Note critiche e filologiche. Asoka e i re ellenistici", *PP* 8, 1953, 449-54, Schwarz, "Die Griechen und die Maurya-Dynastie", 309-12.

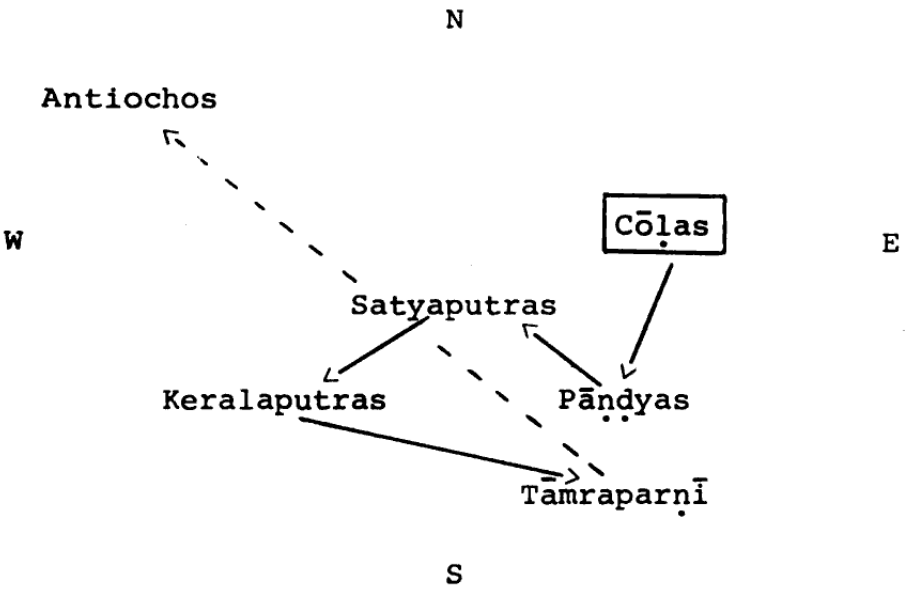
[13] *athā Codā Paṃḍiyā Sātiyaputto Kelalaputto Taṃbapaṃni Aṃtiyoge nāma yonalājā ye cā aṃne tassā Aṃtiyogassā sāmaṃtā lājāno* ...K.

[14] Cf. Law, *Tribes*, 186-89.

[15] Cf. Law, *Tribes*, 190-92, K.A.Nilakanta Sastri, *The Pāṇḍyan Kingdom*, 2nd edn., Madras, 1972, 12ff.

[16] Cf. Basak, *Aśokan Inscriptions* 8, R.Thapar, *Aśoka and the Decline of the Mauryas*, 2nd edn., Oxford, 1963, 124.

Keralaputras [17] on the southwest coast. However, in the south is located Tāmraparṇī, the island, which became at that time so important to Buddhism. The geographical diagramm elucidates the catalogue :



It can be shown already by making a rough sketch of the sequence of these names that Tāmraparṇī is a question of a *territory* belonging to sovereign authority. Just by mentioning the Keralas and the Pāṇḍyas explicitly it is hardly necessary to accept the opinion of B.A.Saletore, [18] who says that not Sri Lanka is meant but the *river* Tāmraparṇī, which flows through the country of the Pāṇḍyas in a southeast direction.

[17] Cf. Law, *Tribes* 193f. and in respect of the above mentioned tribes cf. Choudhury, *Tribes* 12-20, P.Gupta, *Geography in Ancient Indian Inscriptions*, Delhi, 1973, 53-55, Chattopadhyaya, *Bimbisāra*, 119ff..

[18] Cf. *India's Diplomatic Relations with the West*, Bombay, 1958, 232-37. Cf. also Basak, *Aśokan Inscriptions* XIX, 8, 73, but V.A.Smith, *Asoka. The Buddhist Emperor of India*, 2nd edn., Delhi-Lucknow, 1964, 41ff., 156ff., R.Mookerji, *Asoka*, 3rd edn., Delhi-Patna, 1962, 131f., W.Rāhula, *History of Buddhism in Ceylon*, 2nd edn., Colombo, 1966, 10, fn. 1, 32, Thapar, *Aśoka*, 134, Chattopadhyaya, *Bimbisāra*, 135.

In addition to that it should be considered that especially the Pāli Chronicles often emphasize the relation of Sri Lanka with Magadha and the celebrated patron of Buddhism, Aśoka.[19]

After mentioning the south, the Maurya introduces the west together with Antiochus of Syria, but he fails to inform the reader more specifically of the Greeks living further west. In analogy to the above-named method Aśoka summarily proceeds in the fifth rock-edict (V 103 Bloch) namely after mentioning the Greeks (*yona*) in the northwest, the Kambojas, the Gandhāras,[20] and the inhabitants of the western border (*apalaṃtā*, K.).

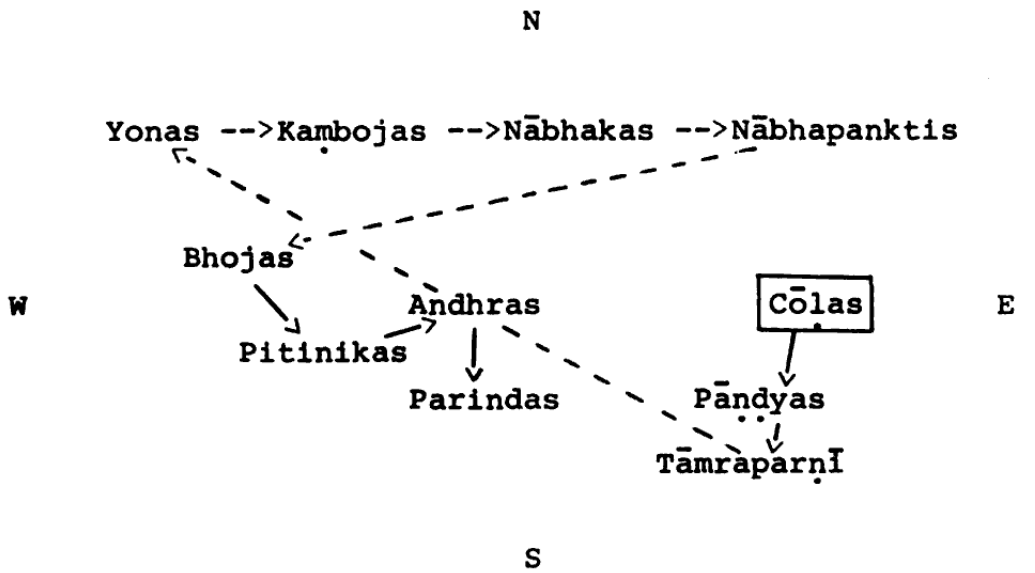
Not before the famous XIIIth rock-edict can a catalogue of nations and tribes be considered from whose sequence we can deduce a geographical orientation. For in connection with Aśoka's propagated "victory of the dharma" (*dharmavijaya*) the inscription mentions at first the realms of the Greeks in the west, which are already indicated previously. On that occasion the rulers are also named : Antiochus (*Antiyoka*), Ptolemaeus (*Tulamaya*), Antigonus (*Antekina*), Magas (*Maka*), Alexander (*Alikasudara*). However, this means that Aśoka - in contrast to the second rock-edict where he, in the course of 'prompt measures' mentioned the south before the west - here proclaiming his missionary and diplomatic activities puts on the top the Hellenic west which was with regard to civilisation equivalent[21] and politically very important. Only then does the south follow, that is at first the southeast with the Coḷas, the Pāṇḍyas, and the Tāmraparṇī, by which again this direction is terminated. But northern tribes are interposed as the next group, the Greeks,

[19] Cf. also Chattopadhyaya, *Bimbisāra*, 135.

[20] Cf. Law, *Tribes*, 1-17, Law, *Some Kṣatriya Tribes of Ancient India*, 2nd edn., Varanasi, 1975, 252-74, Choudhury, *Tribes* 40.

[21] That can perhaps also be inferred from the remark by which (R.E. XIII 128 Bloch, XIII [J] 116 Schneider) it is declared with a certain sympathy that only among the Greeks there do not exist Brāhmaṇas and Śrāmāṇas (*nathi ca se janapade ata nathi ime nikāyā aṃnatā yonesu : bābhane ca samane ca* Schneider:P).

the Kambojas, the Nābhakas, and the Nābhapantis. And beginning with the Bhojas [22] in the south of the Vindhya mountains and continuing to the west with the Pitinikas [23] and the Andhras [24] in the southern Deccan the enumeration of the tribes ends with the Parindas [25], who border on the southwest.
Cf. the following graphic diagram :



Therefore we are able to gather from the indications made by Asoka's inscriptions that the Maurya not only knew the Greeks in the northwestern part of India but also in outlines the Hellenic west across Syria with Tadmor [26] as far as Egypt. But he had also got a distinct idea of middle and southern India and of the southernmost point of junction of his supra-regional relations, of Ceylon.

[22] Cf. Law, *Tribes*, 366-73.

[23] Cf. Law, *Tribes*, 381f..

[24] Cf. Law, *Tribes*, 164-67, Choudhury, *Tribes*, 44.

[25] Cf. Law, *Tribes*, 174f., Choudhury, *Tribes*, 44f..

[26] Cf. Altheim-Stiehl, *Die Handelsstraße*, 64f., but on the contrary Djelani-Davary-Humbach, "Eine weitere aramäoiranische Inschrift", 14.

3. THE KAUṬALĪYA-ARTHAŚĀSTRA

The treatise on practical policy of Kauṭalya,[27] which in respect of its essential parts goes up to the Mauryan epoch and which together with Aśoka's inscriptions demonstrates that Onesicritus' and Megasthenes' *Taprobane* means in fact Sri Lanka, is of twofold importance to our subject : on the one hand it refers to Ceylon and on the other perhaps even to Egypt.

Chap.11 of the second book deals with gems and pearls that are to be received into the royal treasury. It is said (II 11,1) that the superintendent of the treasury (*kośādhyakṣa*) shall, in the presence of qualified persons, admit into the treasury gems and pearls. And then follows a catalogue registering the countries or regions of origin of pearls. The lay-out of this catalogue works in a similar way to that of Aśoka's inscriptions enumerating nations and tribes.

The various kinds of pearls (II 11,2) [29] are divided into those which are produced in the Tāmraparṇī, which seems to be the above-mentioned river in southeast India, further in those from the region of Pāṇḍyakavāṭa, from the rivers Pāśikā, Kulā, Cūrṇī, from the mountainous country of Mahendra, from the rivers Kardamā and the Srotasī, from a pool of water, and at last in those from the Himavat. Since in enumerating all those places where pearls can be found apart from countries,

[27] Cf. L.Sternbach, "Bibliography of Works on the Kauṭilīya Arthaśāstra", *VIJ* 11, 1973, 36-68.

[28] Cf. Tapar, *Aśoka*, 218-25, T.Burrow, "Cāṇakya and Kauṭalya", *ABORI-Jub.Vol.*, Poona, 1968, 17-31, E.Ritschl-M.Schetelich, *Studien zum Kauṭilīya Arthaśāstra*, Berlin, 1973, 11-17, Ritschl-Schetelich, "Historisches im Arthaśāstra des Kauṭilya", *Das Altertum* 20, 1974, 16-20.

[29] *...Tāmraparṇikaṃ Pāṇḍyakavāṭakaṃ Pāśikyaṃ Kauleyaṃ Caurṇeyaṃ Mahendraṃ Kārdamikaṃ Śrautasīyaṃ hrādīyaṃ Haimavataṃ ca mauktikam.*
Cf. also the commentary of the edition of V.Gairola, *The Arthaśāstra of Kauṭilya and the Cāṇakya-Sūtra*, Varanasi, 1962, 151.

mountains, and a pool of water, it is especially that *rivers* are named, it might be assumed that the KA starts its enumeration with a river, of course the southernmost in that succession; and this might be the Tāmraparṇī (today Tāmbaravari) in the southern part of the Pāṇḍya-country (Tinnevelly). In addition it is worth observing that its mouth was very famous for the sake of productive and rich pearl fishery [30] as generally speaking the Gulf of Mannar was called "the sea of gain" (*salābha*).[31] In connection with that it is also interesting to note that the Kiṣkindhākāṇḍa (Rām.IV 4o-43) on the occasion of a description of countries and seas which is given by bird's-eye view mentions in the first place the Tāmraparṇī *mahānadī* (4o,17) and subsequently Sri Lanka, "the island (4o,24 : *dvīpa*) beyond the sea" . Even if it could be supposed for the purposes of an identification of the Tāmraparṇī with Sri Lanka in KA (l.c.) that (a) the Tāmraparṇī in the text is clearly separated from Pāṇḍyakavāṭa (although the rivers Pāśikā and Kulā are given as belonging to Pāṇḍyakavāṭa), (b) that the Tāmraparṇī is named before the Pāṇḍyakavāṭa (which is a term referring to countries, and that could also designate a country in respect of the Tāmraparṇī), (c) that the Bhāṣāvyākhyāna (abbr. Cb) and the Pratipadapañcikā (abbr. Cp) refer to Ceylon separating after all the rivers from the Pāṇḍyakavāṭa, and (d) that the structural antipole of the catalogue of all these places is the region of the Himavat and therefore presupposing also a region in the beginning, it seems nonetheless difficult to remove the two

[30] Cf. N.L.Dey, *The Geographical Dictionary of Ancient and Mediaeval India*, 2nd edn., New Delhi, 1971, 203, 259.

[31] Cf. R.K.Mookerji, *Indian Shipping. A History of the Sea-borne Trade and Maritime Activity of the Indians from the Earliest Times*, Allahabad, 1962, 48. It is also worth mentioning that Śrī Laṅkā-Siṃhala was herself called "gem-island", *ratnadvīpa* on account of the gems found there (cf. S.Beal, *Buddhist Records of the Western World* II, 2nd edn., Delhi, 1969, 236, fn. 4).

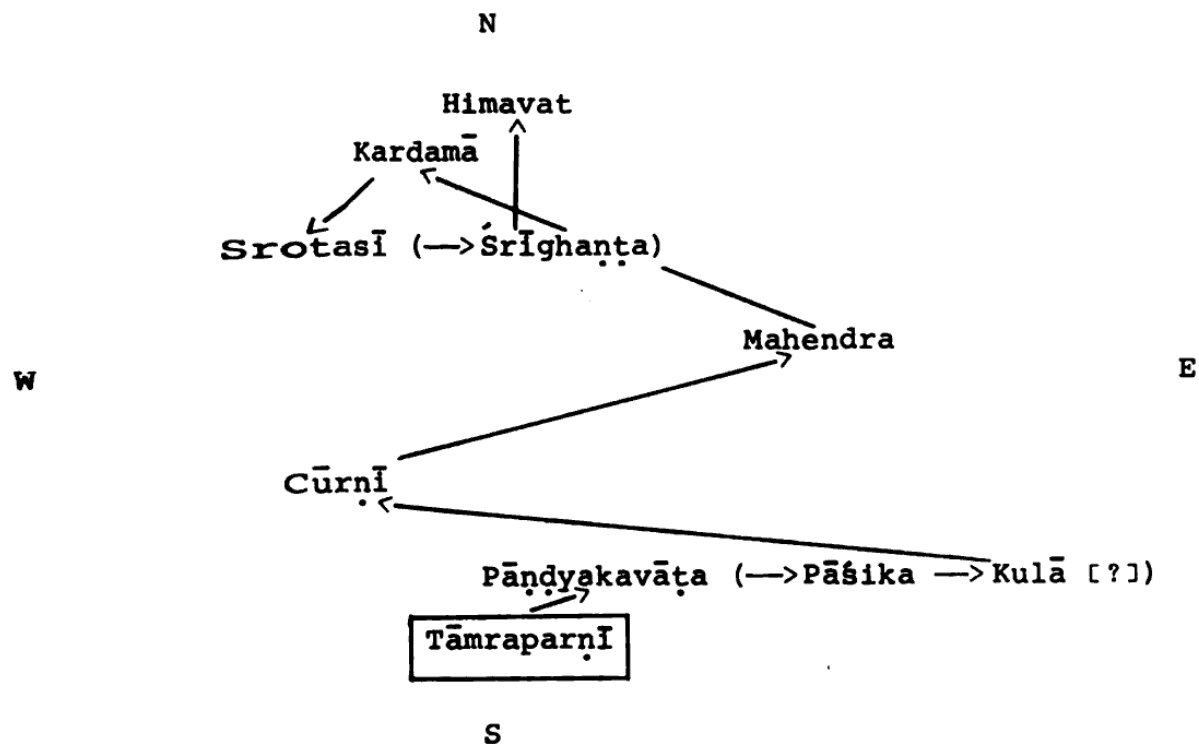
most important arguments : (a) On account of the series of the rivernames it is likely that also the Tāmraparṇī is a river which can be located in the southeast of the country of the Pāṇḍyas. (b) Since in KA (II 11,28) - as will be shown - the word *pārasamudra* signifies a territory which can only mean Sri Lanka and as this country is not called Tāmraparṇī, we can learn from these different terms (sc. Tāmraparṇī and pārasamudra) that there are meant two different places too, the river and the island. One should also remember how in the above-quoted passage of the Rām. the method was as well to enumerate at first the *mahānadī Tāmraparṇī* as afterwards the *dvīpa* beyond the sea.[32] By this means it follows in all probability that the Tāmraparṇī in the KA (II 11,2) is the *river* in the country of the Pandyas which - as we know - produced famous pearls.

After the river Tāmraparṇī follows the entire country of the Pāṇḍyas with the rivers Pāśikā (cf. the Cāṇakyaṭīkā [abbr. Cj]) and Kulā, which no more can be localized, since the references in Cb and Cp to Ceylon are with regard to the geographical context unlikely. Thereupon the river Cūrṇī is ascribed by the commentators to Kerala, i.e. to the south-west of the coast of Malabar. Together with the Mahendra,[33] which is very difficult to identify and which might be localized within the hilly country between Orissa and Madura, the direction changes to the north towards the east coast. Cj locates the Kardamā into the north of the subcontinent, the *uttarāpatha*, which comes up to the Kashmir-Kabul region.

[32] There is no conclusive evidence in N.Lal Dey's opinion (cf. *The Geographical Dictionary*, 113f.) saying that Laṅkā and Ceylon are not identical islands. Cf. also the full but not satisfying discussion in V.V.Mirashi, "Location of Rāvaṇa's Laṅkā", in: *Literary and Historical Studies in Indology*, Delhi-Varanasi-Patna, 1975, 205-19. Besides it can be noted that the Mbh knows in all probability of Rome, Alexandria and Antioch (cf. F.Edgerton, "Rome and [?] Antioch in the Mahābhārata, *JAOS* 58, 1938, 262-65).

[33] Cf. Gupta, *Geography*, 240-44.

But according to Cp one should look for the SrotasÏ and the pool of water known as Śrīghaṇṭa on the northwest coast, probably in the territory of Barbara (cf. Peripl.m.r. 38 : Βαρβαρικόν , Ptol.VII 1,59). At last the Himālaya is given as the northernmost antipole of Tāmraparṇī. A graphic diagram is again to illustrate the idea of the text and its geographical method in some respects closely connected with that of Aśoka's inscriptions :



But two more passages tend to Sri Lanka. After the discussion of various kinds of jewelry II 11,28 briefly deals with the origin of the *maṇi*, a precious gem, which primarily was used as in necklaces.[34] "Kauṭa, Māleyaka and Pārasamudraka are several varieties of gems" (*maṇiḥ kauṭo māleyakaḥ pārasamudrakaśca* [GM *mauleyakaḥ*, D *pārasamudraśca*]) is the exact information. Koṭi and Mālā [35] the commentaries localize

[34] Cf. Gy.Wojtilla, "Indian Precious Stones in the Ancient East and West", *AOHung* 27, 1973, 212-15.

[35] Cf. Wojtilla, "Indian Precious Stones", 219.

at the coast of Malabar and Cp identifies the *pārasamudra*, "the region beyond the sea", with Ceylon.[36] This general term for the island in the south appears again in connection with the mention of certain kinds of aloe wood (*aguru*). In II 11,57-59 it is said that compared with the black species of the aloe from Joṅga and the dark one from Doṅga the aloe wood from beyond the sea (*pārasamudraka*) has a variegated appearance. As one can realize, here also lies behind the texts a clear geographical imagination : at first southwest India and after that Ceylon. All these passages surprise by their accurate topography and the scope of their horizon. Looking at that method one could be tempted to assume that both Aśoka and the KA made use of some kind of already existent itineraries because in both cases the enumerated places, nations, and tribes reflect a certain and well-weighed scheme.

KA II 11,42, where the importation of coral is discussed is as well informative. It is namely said of the coral (*pravāla*) that the one from *Ālakanda* and that from *Vivarṇa* are red and of the colour of the lotus (*pravālakam ālakandakaṃ vaivarṇikaṃ ca, raktaṃ padmarāgaṃ ca* [Cj *ālatsāndrakam*, Cb *ālasāndrakam*]). Since there is the most likely identification of Ālakanda [37] with Alexandria in Egypt [38] and not with that one on the lower Indus [39] we can assume that in this passage a hint is given to the Red Sea area. Pliny (n.h.XXXII 21) expressis verbis passes on, one must know : *gignitur [sc. curalium] et in Rubro quidem mari, sed nigrius*. And in the same paragraph he also writes : *quantum apud nos Indicis*

[36] Cf. Gairola, *The Arthaśāstra*, 154. In respect of the *pārasamudra* cf. Schwarz, "Pliny teh Elder", 43 f. .

[37] Cf. the unsuitable information derived from the commentaries in Kangle, *KA* II 1oo (ad II 11,42).

[38] Cf. Schwarz, "Pliny the Elder", 37f. Carefully comments M.Chandra, *Trade and Trade Routes in Ancient India*, New Delhi, 1977, 79.

[39] Cf. *Arr.an.* V 29, 3; VI 15, 2.4, *Diod.* XVII 1O2, Curt. IX 8,8, Steph. Byz. s.v..

margaritis pretium est...tantum apud Indos curalio. In the same sense we can understand the explanation of Vivarṇa in Cp, a place which cannot be identified in a more detailed way, saying that it must be looked for in the coastal area of the Greeks (*Yavana-dvīpa*) [40] . Therefore Pliny can be regarded as a witness for the enterprising exchange of gems between India and the west, especially the Red Sea area [41], and the KA in its turn points to a commercial intercourse, which existed before Pliny's age and which was not only restricted to south India but also expanded to the coast of Sri Lanka, a fact which can be inferred without difficulty from India's trading with Ceylon. Though Taprobane was not situated in the centre of commercial crossings she was by no means cut off from the world around, which can be realized by the above-quoted texts.

4. THE MILINDAPAÑHA

"The questions of King Milinda" [42], this famous non-canonical work of the Buddhists, which relates how the Indo-Greek king Milinda (Menandros) - a warrior and scholar [43] like

[40] Cf. Gairola, *The Arthaśāstra*, 157, Chandra, *Trade* 88.

[41] Cf. Wojtilla, "Indian Precious Stones", 223.

[42] Cf. Lévi, Quid de Greacis 9f., W.W.Tarn, *The Greeks in Bactria and India*, 2nd edn., Cambridge, 1966, 414-36, 538, J.Gonda, "Tarn's Hypothesis on the Origin of the Milindapañha", *Mnem.IV.Ser.*2, 1949, 44-62, J.D.M.Derrett, "Menandros", *KlPauly* 3, 1969, 1198f., F.F.Schwarz, "Griechenland und Indien im Spiegel der antiken Literatur", *36.Jb. Bundesgym.* Fürstenfeld, 1966, 83f., Schwarz, "Neue Perspektiven in den griechisch-indischen Beziehungen", *OLZ* 67, 1972, 16f., S.C.Banerji, *An Introduction to Pāli-Literature*, Calcutta, 1964, 74-79, É. Lamotte, *Histoire du Bouddhisme indien*, 2nd edn., Leiden, 1967, 414-18, 465-69, A.J.Festugière, *Études de philosophie grecque*, Paris, 1971, 165-76. Cf. in regard of the date of Milinda R.M.Smith, "Greek Kings in India: A Synopsis", *ABORI* 58-59, 1977-78, 330ff. (=158-148 B.C.).

[43] Cf. *Miln* I 9, p.3,4: *paṇḍita,anantabalavāhana*.

Alexander in Strabo's view (XV 1,64 C 715 : ἐν ὅπλοις φιλοσοφῶν) [44] - charmed by the words of the Thera Nāgasena was at last converted to Buddhism, can in accordance with its essence be dated in the second century B.C. and localized in northwest India; it seems to be likely, too, that this outstanding work was reduced to writing at the beginning of the first century A.D.[45] Soon after that in Ceylon the Miln was revised and rendered into Pāli. However, this text is relevant to the subject under discussion mainly in respect of the 'internationality' of post-Mauryan overcrowded regions, illustrating culture and trade of that epoch.[46]

Straight in the beginning *Sāgala* [47], Milinda's 'seat of court', is introduced vividly and so to speak with the touch of a fabulous glamour (I 2,p.1 Trenckner) : Sāgala is told to be a great distributing place of products in the country of the Baktrian Greeks, situated in a delightful district supplied with rivers, rocks, parks, gardens, groves, lakes and tanks, a lovely place of rivers, rocks and woods.[48] The city also is portrayed as being laid out with streets, squares, cross roads and marked places.[49] Its shops were filled with

[44] Cf. Schwarz, "Invasion und Résistance", 102, fn. 94.

[45] Cf. A.K.Warder, *Indian Buddhism*, Delhi-Patna-Varanasi, 1970, 330.

[46] For the comparatively close contacts of the later Mauryas with the Greeks cf.H.Alahakoon, *The Later Mauryas (232 B.C. to 180 B.C.)*, New Delhi,1980,125 f.,167-74, and his most interesting conjectures referring to Antiochus III and Σοφαγασῆνος (Subhāgasena = Vīrasena Maurya) in connection with Polyb. XI 34,11-12, and the extensive discussion in P.H.L.Eggermont,"New Notes on Aśoka and His Successors", *Persica* 2, 1965-66, 58-66.

[47] Cf. F.F.Schwarz, "Sagala", *KlPauly* 4, 1972, 1497.

[48] *Athhi Yonakānaṃ nānāpuṭabhedanaṃ Sāgalan nāma nagaram nadī-pabbata-sobhitaṃ ramaṇīya-bhūmippadesabhāgaṃ ārām-uyyānopavana-talāka-pokkharaṇī-sampannaṃ nadī-pabbata-vana-rāmaṇeyyakaṃ...*

[49] *suvibhatta-vīthi-caccara-catukka-siṅghāṭakaṃ...*

all sorts of costly merchandise (*varabhaṇḍa*) and its streets were crowded with men of various origin, status and occupation (I 2,p.2). Besides Sāgala is said to have welcomed the teachers of every creed and to have been well disposed towards learned men of each of the different sects. This city offered precious stones in plenty (*bahuratana*) and was full of money, silver, gold, copper and stone ware [50] ; to put it briefly Sāgala was a true abode of treasures (*nidhi-niketa*).

Furthermore Milinda, the king of the city, is reported (I 9,p.3) to have been wise, learned, intelligent and capable (*paṇḍito byatto medhāvī paṭibalo*). He always desired a learned discussion and partners who were able to talk to him and to resolve his philosophical doubts (I 1o,p.4 : *kankhā*). It is not unattractive to remark that the opposite course - i.e. the asking of an Indian for the exchange of ideas with the Greeks - was adopted by the Maurya-king, Amitraghāta (Amitrochates), who was in correspondence with Antiochus I.[51] However, surrounded by five hundred Yonakas (I 11, p.4 : *pañcasatā Yonakā*, cf.I 12,p.4,I 37,p.19) Milinda again and again entered into discussion with Indian wise men and when he was disappointed he came to the conclusion (I 14, p.5): "India, my dear, is certainly an empty thing, certainly nonsense, my dear, is India" (*Tuccho vata bho Jambudīpo, palāpo vata bho Jambudīpo*). Quite apart from the fact that this groan, by preparing effectively in a way the appearance of the thera Nāgasena, has the function of a literary construction, one cannot only realize the self-confidence of the Greek king but also the fact that Milinda being at the head of the culture of foreigners and the Buddhist monk personify rivalling forms of spirituality. For the Graeco-Baktrian, well acquainted with philosophy and rhetoric, desires to obtain profound information from the Indians; but they are not able to supply it. This passage of the Miln shows - as it seems - as well uncertainty as selfconfidence, the intellectual force of the Greeks within

[50] *kahāpaṇa-rajata-suvaṇṇa-kaṃsapatthara-paripūraṃ.*

[51] *cf. Schwarz*, "Daimachos", 293f..

a foreign culture [52], but also an effort to get in contact with the Indian way of thinking. Therefore the Miln indirectly attests the picture of the Greeks, always interested in the culture of foreign countries, as we get it for instance from the early Alexander-historians but also the mental certitude which is attested by the excavations of Hellenic settlements in northwestern India [53]. After all we can read that Milinda too paid respect to Indian spirituality, saying (II 1,5,p.32): "These Buddhist monks [54] are wise men, they will be able to teach me". [55]

Then Milinda asked by Nāgasena where he comes from (*jātabhūmi*) answers (III 7,4.p.82) that he was born on an island called Alasanda (*Alasando nāma dīpo, tatthā aṃ jāto*). And when the king is asked about his native town (III 7,5, p. 83: *jātanagara*), Milinda declares that his place of birth is a village called Kalasi [56] (III 7,5,p.83 : *Kalasigāmo nāma, tatthāhaṃ jāto*) [57]. It is not any longer possible to determine the position of Kalasi, it is only striking that in connection with a Greek ruler here instead of an expected *nagara* a *gāma*

[52] Cf. the instructive brief survey of A.Polkowski, "Elementy hellenistyczne w kulturze starożytnych Indii", *Meander* 21, 1966, 220-36.

[53] Cf. Schwarz, "Neue Perspektiven", 10, fn. 6, P.Bernard, "Fouilles de Ai Khanoum", *CRAI*, 1974, 280-308, M.Avi-Yonah, *Hellenism and the East. Contacts and Interrelations from Alexander to the Roman Conquest*, Ann Arbor, 1978, 164ff..

[54] Referring to the *samaṇā* cf. T.W.Rhys Davis, *The Questions of King Milinda* I, 2nd edn., New York, 1963, 7 fn. 2, Warder, "Indian Buddhism", 33-42.

[55] *paṇḍitā ime samaṇā Sakyaputtiyā, te maṃ sikkhāpessanti.*

[56] Tarn (*The Greeks in Bactria and India*, 420) refuses with reason to accept the identification of Kalasi with Kapisa.

[57] By the way Nāgasena himself came from a *brāhmaṇagāma* called Kajaṅgala at the foot of the Himālaya mountain (cf.I 19,p.8;23,p.1o).

is alleged.[58] Since Alasanda's distance from Sāgala is given as two hundred yojanas, Alasanda most probably stands for Alexandria/Kapisa[59]. According to that Milinda - Menandros[60] turns out to have been a Greek from Paropamisadae.

By all means astonishing is the insight into the cultural contacts of the Greeks in India,[61] which the Miln offers but also surprising is the geographical horizon of this work.[62] For the text shows - besides of the northwest - of Pāṭaliputra in Magadha (I 32, p.16,33-34, p.17, 1,47, p.121) but it knows also of the east with Kāliṅga (IV 649, p.256). Thus the Sakas (Scythians) are mentioned in IV 8,88,p.327 sq., the Yavanas (the Baktrian Greeks), Cīna (China), Vilāta (in the country of the Tartars), Alasanda (Alexandria/Kapisa), Nikumba (?), Kāsi (Benares), Kosala (the territory in the northwest of Pāṭaliputra), Kasmīra and Gandhāra. That means therefore the whole north to the Ganges plain and the further northeast.

[58] It is indeed questionable if by calling Kalasi a village it can be gathered that Milinda "was born a commoner" (cf.Tarn, *The Greeks in Bactria and India*, 421) and therefore not of noble birth. It sounds rather reasonable to suppose that behind this confrontation of *nagara* and *gāma* the self-confidence of the Hellenic king is shining through who also to some extent accomplished the Indian tradition referring to this; one should only think of the famous conqueror Candragupta Maurya who as a village-born usurper overthrew the town-bound Nandas or of Nāgasena, the genius.

[59] Cf. Tarn, *The Greeks in Bactria and India*, 460ff.. The rather ominous Alexandria at the Indus which is proposed by Rhys Davids (*The Questions* I, XXIII) and also by D.C.Sircar (*Cosmography and Geography in Early Indian Literature*, Calcutta, 1967, 67, fn. 114) is not likely to be accepted.

[60] Cf. A.K.Narain, *The Indo-Greeks*, 2nd edn., Oxford, 1962, 74-100 (and the profound review of P.H.L.Eggermont, *Bibl.Or.* 18, 1961, 169-73).

[61] Cf. G.Woodcock, *The Greeks in India*, London, 1966, 94-114, M.V.Dev Mohan, *The North-West India of the Second Century B.C.*, Ludhiana, 1974, 203-27.

[62] Cf. Rhys Davids, *The Questions* I, XLII-XLV, Chandra, *Trade*, 90ff..

In the course of the description of all these goings-on in a flourishing large town given by Nāgasena (V 4,p.331) there are introduced towns and countries from which people crowded together to that place : Scythia, Baktria, China and Vilāta, Ujjena (the capital of Mālava in the southwest of central-India), Bhārukaccha (the Greek Barygaza on the coast of Gujarāt), Kāsi, Kosala and Aparanta, which means west Indian territories. Further there are named Magadha, Sāketa (Ayodhyā) in the northwest of Pāṭaliputra, Soraṭṭha (Surāṣṭra), the peninsula of Kathiāwār, the western regions, Koṭumbara (?), Madhura on the river Yamunā, Alasanda, Kasmīra and Gandhāra. Thus within that list is added to the northwest, the north and the northeast central India together with the maritime country of the northwest.

But even farther extended is the geographical horizon when a comparison is made (VI 21,p.359) with a naval merchant (*nāvika*) who crosses the great sea (*mahāsamudda*) with his ships and who goes to Vaṅga (Bengal) or Takkola on the Malayan peninsula [63] or Cīna or Sovīra (probably Sauvīra in the east of the lower Indus valley) or Soraṭṭha or Alasanda or Kolapaṭṭana on the Coromandel coast on the southeast or at last to Suvaṇṇabhūmi (Burma), which is Ptolemy's Chryse Chora [64]. In that passage, I presume, is not meant the Purāṇic Varvara-Barbara-Alasanda-Alakanda (Barbarikon) on the lower Indus (cf.Sircar 74 sq.) but rather Alexandria in Egypt [65] since there are only mentioned countries and international

[63] Cf. G.E.Gerini, *Researches on Ptolemy's Geography of Eastern Asia*, London 1909, 85-95 (esp.92), Chandra, *Trade*, 129ff.

[64] Cf. Gerini, *Researches* 64-66, 670f., B.Srivastava, *Trade and Commerce in Ancient India (From the Earliest Times to c.A.D.*300), Varanasi, 1968, 80, 88f., 107ff., 261f., Chandra, *Trade*, 129-41.

[65] Cf. Tarn, *The Greeks in Bactria and India*, 421, 4th edn., P.H.L.Eggermont *Alexander's Campaigns in Sind and Baluchistan and the Siege of the Brahmi Town of Harmatelia*, Leuven, 1975, 147f., 198 ("not identified").

wholesale trading ports a long way off (cf. *mahāsamudda*); almost all of them are situated outside the Indo-Baktrian territories, and only Alexandria in Egypt sounds sensible in that case, being a true turntable of commercial intercourse. Thus the southeast of the subcontinent, Farther India, and Egypt have joined the area dealt with so far. And it is safe not to overlook the fact that Nāgasena is speaking, the Buddhist, who for his part figures in the tradition of Aśoka's 'internationalism'.

Compared with the systematical arrangement of the toponymies of Aśoka's inscriptions and of the KA there cannot be discovered a definite structure mentioning the various countries and places in the Miln, on the contrary in connection with a paradigmatic toponymical variety the efficiency of a literary variety seems to be calculated; the disorderliness of the 'chartography' evidently serves the purpose of this variety, which emphasizes the impression of the internationality of Milinda's epoch. Therefore it is not too difficult to infer from all these places and countries mentioned in the Miln that by all known odds the Indo-Greek age was also familiar with the existence of Sri Lanka, even though the text does not make reference to the island expressis verbis. After all it seems to be indicative of the 'old stratum' of that passage (i.e. a stratum very close to the composition originated in northwestern India and for that reason not modified in Ceylon) that the Laṅkādīpa is not mentioned by name; one must not forget that Sri Lanka at that time was with regard to the overseas trade of secondary importance and that for this reason she was not mentioned as a relevant example. But if this passage had been modified in the course of the Pāli translation later on the Laṅkādīpa would have been moved to the center inevitably. This procedure of the Pāli Chronicles, which always pay attention to a Buddhist-Singhalese nationalism is very well known. However, in this passage of the Miln Sri Lanka as a stronghold of Buddhism is not in demand, that is why she is withheld.

5. DĪPAVAṂSA AND MAHĀVAṂSA

We can work to a certain extent with the Pāli Chronicles (esp. the Mv) historically, considering their annalistic disposition.[66] The fact that the Dv was composed before the fifth century A.D. and the Mv in the sixth century by the poet Mahānāma makes little difference, since hoary material is very often used there.

It is said that on the occasion of the so-called third council of Pāṭaliputra in the middle of the third century B.C. "the illuminator of the teaching of the Buddha" (Mv XII 1 : *jinasāsanajotaka* , Dv VIII 1 :*dīghadassī* [far-seeing]), Moggaliputta, planned a major mission propagated by monks (Mv XII 2 : *pesesi...te te there tahiṃ tahiṃ*, Dv VIII 1 : *sāsanassa...paccantamhi patiṭṭhāna*) to all the countries of the earth. And the Dv (VIII 1-13) and the Mv (XII 1-55) supply information on the catalogue of countries of this Buddhistic propaganda campaign.

There are mentioned Kashmir, Gandhāra, Mahisamaṇḍala (the region of Avantī with Ujjayinī), Vanavāsa in southern India, Aparantaka (the west with northern Gujarāt, Kathiāwār and Sind), and a Greek missionary called *Dhammarakkhita* (Mv XII 4: *Yona Dhammarakkhitanāma*).[67] This Greek designated as "the great wise elder " (Dv VIII 7 : *Yonakadhammarakkhita-thero nāma mahāmati*) and as Thera (Mv XII 34). Nevertheless within the list of all the dispached missionaries in Mv XII 3-7 (!) it has to be noticed that the Greek is the only messenger who does not bear the clerical title of a *thera*.

[66] Cf. H.Bechert, "The Beginnings of Buddhist Historiography in Ceylon", *AncCeylon* 3, 1979, 21-28, S.Kiribamune, "The Mahāvaṁsa: A Study of the Ancient Historiography of Sri Lanka", in: L.Prematilleke-K.Indrapala-J.E.van Lohuizen-De Leeuw (ed.), *Senarat Paranavitana Comm.Vol.*, Leiden, 1978, 125-36.

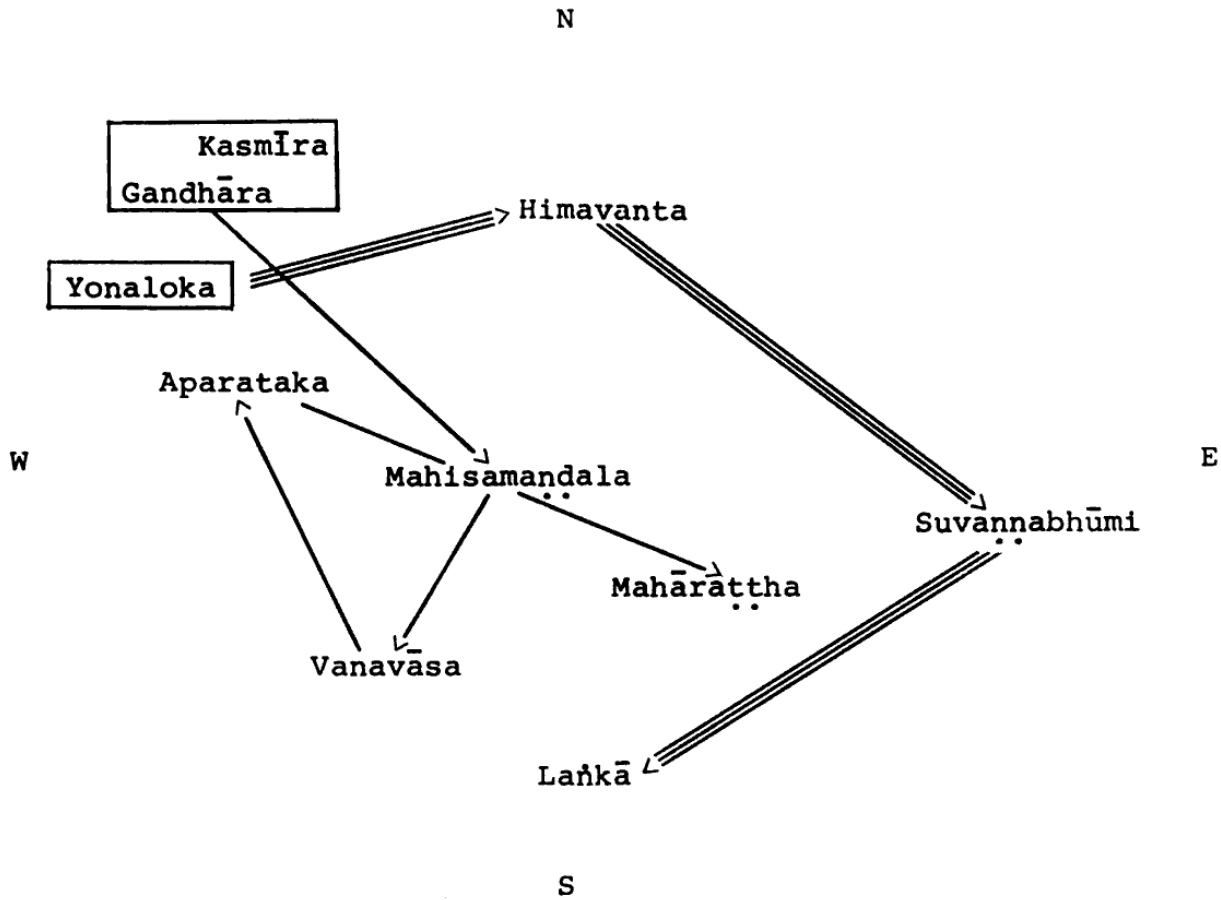
[67] In respect of the question concerned with *Dhammarakkhita* resp. *Mahārakkhi* cf. Chattopadhyaya, *Bimbisāra*, 130-36.

That might be still regarded as an allusion to the exceptional position of the Greeks within the Buddhist mission. Perhaps the *Yona* had to travel to the northwest acting as a thera without being a *thera* in all respects. That he nevertheless took charge might be traced back to the fact that in Aparantaka with its Persian, Indian, Greek and Aramaic speaking population the Greek's knowledge of languages was in great demand. Besides it is typical too of Buddhist political theology that this monk, who was sent off to the Greek territory (*Yonaloka*) was the non-Greek thera *Mahārakkhita* (Mv XII 5). Furthermore there are mentioned Mahāraṭṭha, Graeco-Baktria (Mv XII 5,39-4o: *Yonaloka, Yonavisaya*), the region of the Himālaya (Mv XII 6: *Himavantapadesa*, 41-43, Dv VIII 1o), and Suvaṇṇabhūmi (Mv XII 6,44-54, Dv VIII 12). Thereupon follow the instructions with which five monks were sent to Sri Lanka; they are interesting also from a literary point of view on account of the intended use of alliteration. Here Moggaliputta says to the envoys (Mv XII 8) : "You shall establish, in the pleasant island of Laṅkā, the pleasant teaching of the Buddha".[68]

Even if the comparatively lucid method applied in the itineraries, in Aśoka's inscriptions and in the KA, cannot be demonstrated in the Chronicles a certain method, which seems to be calculated, also gleams through in the Pāli epics : After the northwest the western central territories are mentioned, then the south which follows the northwest coast and then the southeast. In this way the subcontinent is, so to speak, outlined. This way as it were designs a spiral line around which, beginning anew with the northwest via north, the Farther East, an outer arc bends as far as Laṅkā. Consequently, the island becomes the final point and the climax of the mission, Sri Lanka turns out to be - across countries and seas - the concourse of the

[68] *Laṅkādīpe manuññamhi manuññunaṃ jinasāsanaṃ/patiṭṭhāpetha tumhe.*

Buddhist movement [69]. Cf. the graphic diagramm :



Approximately forty years after Milinda-Menandros the Singhalese king, *Duṭṭhagāmaṇi*, on the occasion of the cornerstone ceremony of the Mahāthūpa in Anurādhapura invited monks from all parts of the globe (Mv XXIX 29-43). Now the places from which thousands of *bhikkhus* came to Anurādhapura can be divided in three main groups; each group started in the north and in each case moved to the south with a certain east-west shifting. Therefore the Buddhist mother-country in the Ganges plain constantly marks the starting-point for letting the bulk of the pil-

[69] As already mentioned in connection with the non-appearance of Sri Lanka in the Miln we must emphasize that in Ceylon Buddhism was constitutional, a state religion with nationalistic tendencies (cf.Rāhula, *History of Buddhism*, 48-77).

grims ultimately wander southwards into the island. Cf. the graphic diagramm :

N

(3o)	Rājagaha	= Rājagṛha, Magadha
(31)	Isipatana	= monastery at Benares
(32)	Jetārāmavihāra	= Kosala
(33)	Vesālī	= in the north of Patna
(34)	Kasambī	= at the river Yamunā
(35)	Ujjenī	= Avanti
(36)	Pupphapura	= Pāṭaliputra
(37)	Kasmīramaṇḍala	= Kashmir
(38)	Pallavabhoga	= Persia
(39)	Alasandā	= Alexadria / Kapisa
(4o)	Viñjhāṭavī	= Vindhyā
(41)	Bodhimaṇḍavihāra	= Bodhgayā, Magadha
(42)	Vanavāsopadesa	= Banavāsī, south India
(43)	Kelāsamahāvihāra	= monastery in Indian continent

S

The 39th verse sounds significant as to the Graeco-Buddhist and the shadowy Graeco-Singhalese relations. It runs : "From the Greek city of Alasandā came the elder *Yonamahādhammarakkhita* together with 3o.ooo monks" [7o]. It is already known from the Miln that Buddhism was rooted among other places also in the region of Alexandria/Kapisa, as this passage proves. And as in Mv (XII 4) and Dv (VIII 7) here, too, the Greek origin of the thera is emphasized. In this way and also with regard to the background of Duṭṭhagāmaṇi's invitation of the Buddhist world the speculation made in the course of the discussion of the Miln is substantiated that already under Milinda Ceylon was well known.

[7o] *Cf. Mv XXIX 39 : Yonanagarālasandā Yonamahādhammarakkhito / thero timsasahassāni bhikkhū ādāya āgamā //.*

Thus the interrelation of India and Sri Lanka were pointed out but also the presence of the Greeks in India and Ceylon. In addition to it a knowledge of the Red Sea area and Egypt was suggested.

6. THE FRAGMENT OF IAMBULUS

Even Onesicritus and Megasthenes had knowledge of Taprobane[71] and later on further details leaked out.[72] Iambulus' utopian romance of travels[73] can be regarded in some way as a coded example in this respect well. Of course until now not too much has been known as to what to make of the geographical and historical backgrounds of Iambulus' story.[74]

[71] Cf.F.F.Schwarz,"Onesikritos und Megasthenes über den Tambapaṇṇidīpa," *GB* 5,1976,233-63.

[72] Referring to the extended geographical horizon even later on cf. R.Delbrueck, "Südasiatische Seefahrt im Altertum", *BJbb* 155-56, 1955-56, 38-58, G.M.Raschke, "New Studies in Roman Commerce with the East", *ANRW* II 9.2, 1978, 650-79, and esp. A.Dihle, "*Der Seeweg nach Indien*", *IBK* 4, 1974, Dihle, "Die entwicklungsgeschichtlichen Voraussetzungen des Indienhandels der römischen Kaiserzeit", *ANRW* II 9.2, 1978, 547-57, 567-73. Cf. also W.Schmitthenner, "Rome and India: Aspects of Universal History During the Principate", *JRS* 69, 1979, 90-106, L.Casson, "Rome's Trade with the East: The Sea Voyage to Africa and India", *TAPhA* 110, 1980,.21-36 (esp. 31ff.).

[73] Cf. W.Kroll, "Iambulos", *RE* IX, 1914, 681-83, W.E.Brown, "Some Hellenistic Utopias", *CLWeekly* 48, 1955, 61ff., R.Helm, *Der antike Roman,* 2nd edn., Göttingen, 1956, 26ff., Simon, *Hellenistische Märchenutopien,* 240ff., F.Altheim-R.Stiehl, *Die Araber in der Alten Welt* I, Berlin, 1964, 80-92, W.Röllig, "Iambulos", *KlPauly* 2, 1967, 1308f., Braunert, *Utopia*, 14ff., Kytzler, "Utopisches Denken", 62f., Müller, *Zur sozialen Utopie,* 279-86, Swoboda, *Der Traum vom besten Staat,* 35-42, Ferguson, *Utopias,*108, 124-29, 144, 175, Müller, *Sozialutopien,* 231ff., M.K.Trofimova, "L'utopie de Jambulus dans l'historiographie étrangère", in: *Histoire des doctrines socialistes,* Moskva, 1977, 124-41.

[74] Cf. J.O.Thomson, *History of Ancient Geography,* Cambridge, 1948, 176f., F.F.Schwarz, "Arrian's Indike on India: Intention and Reality", *EaW* 25, 181-84.

Chr. Lassen,[75] however, tried to identify the Island of the Sun with Bali, E. Rohde [76] with Ceylon, M. Cary - E. H. Warmington [77] connected it with Dioscorida-Socotra,[78] H. v. Wissmann [79] identified the Iambulian island with Madagascar, whereas Warmington [80] advocated on the other hand its identification with Sri Lanka. Of course Iambulus' report on his voyage serves the purpose of designing a fictional utopia [81] which was already developed in different ways among others by Plato, Aristotle, Zenon, Theopompus, Hecataeus of Teos and Euhemerus.[82]

In all probability facts of three kinds derived from the excerpt of the Iambulus romance in Diodorus (II 55-60) can be reconstructed : (1) the itinerary, (2) the period, and (3) the train of thought in the utopia. Whether one sees in this romance only a work of fiction or whether one concedes to the author a certain degree of personal experience

[75] Cf. *Indische Altertumskunde* III 1, 2nd edn., Osnabrück, 1968, 269f..

[76] Cf. *Der griechische Roman und seine Vorläufer*, 3rd edn., Leipzig, 1914, 251, fn. 1.

[77] Cf. *Die Entdeckungen der Antike*, Zürich, 1966, 388-91.

[78] Cf. W.H.Schoff, *The Periplus of the Erythraean Sea. Travel and Trade in the Indian Ocean by a Merchant of the First Century*, 2nd edn., New Delhi, 1974, 133ff., Raschke, "New Studies", 645, 657-60.

[79] Cf. "Die Südgrenze der Terra Cognita von Juba und Plinius bis Ptolemäus", in: *Festschr. H.Kinzl, Schlern Schriften 190*, 1958, 322f..

[80] Cf. *The Commerce Between the Roman Empire and India*, 2nd edn., London-New York, 1974, 43, 121f..

[81] Cf. Flashar, "Formen utopischen Denkens", 14.

[82] Cf. T.S.Brown, *Onesicritus. A Study in Hellenistic Historiography*, Berkeley-Los Angeles, 1949, 68-77, Ferguson, *Utopias*, 61-121. Moreover some Iranian influence can be shown in particular in the light of Helios, worshipped by the insular race of Iambulus (cf. Altheim-Stiehl, *Araber*, 90ff.).

makes no difference. Relevant to our subject is the fact that a certain geographical and historical outline becomes manifest which points to the Hellenistic conception of the world.

With regard to the race and the sphere of action of the Hellenized Nabataen Iambulus what is essential already has been said by Altheim and Stiehl. Here we are, first of all, concerned with the concise stock-taking of the Iambulian itinerarium and with the literary balance of the events described in the epitome of Diodorus.

In the ocean to the south - it is said (55,1) - has been discovered an island and concerning it marvellous stories were told (παραδοξολογούμενα), which are then briefly sketched (συντόμως διελθεῖν) by Diodorus :

55,2-6 : A certain Iambulus , a merchant devoted to the pursuit of education (παιδείαν ἐζηλωκώς), made a journey to Arabia. But while travelling to the spicebearing region of Arabia (τῆς Ἀραβίας ἐπὶ τὴν ἀρωματοφόρον), he and his comrades were captured by some robbers on the trip. Now Iambulus and one of his fellow-captives were appointed to be herdsmen (νομεύς), but later on he and his comrade were captured by certain Ethiopians and carried to the coast of Ethiopia (πρὸς τὴν παραθαλάττιον τῆς Αἰθιοπίας). They were, however, kidnapped again, since they were of an alien people (ἀλλοεθνεῖς) and therefore regarded as being able to purify the land (εἰς καθαρμὸν τῆς χώρας). For that purpose a seaworthy boat was built, which could easily be controlled by two men (πλοιάριον ... ἐν τῇ θαλάττῃ χειμῶνας ἀναφέρειν ἰσχῦον καὶ ῥᾳδίως ὑπὸ δυοῖν ἀνθρώπων ὑπηρετεῖσθαι δυνάμενον). It can be already inferred from the particularity of that detail what pleasure in story-telling dominated in the original version of the romance. Thus supplied with food for six months - which means a very long voyage - the two men were put to sea, and at the same time were told they would come to a happy island (εἰς νῆσον εὐδαίμονα) and to honorable men (ἐπιεικεῖς ἀνθρώπους), among whom

they would live blissfully (μακαρίως). And they were told by the Ethiopians that in case they should arrive safely at the island their own people would live happily throughout six hundred years. So Iambulus and his comrade sailed about four months and were at last carried to the island which was round in shape and had a circumference of about 5ooo stades.

All that signifies that Iambulus moved to Yemen from the Nabataen country along the spicebearing route. Not far from the coast he was captured and kidnapped. "So war es möglich, daß Äthiopen, die von der Nordküste Abessiniens, etwa dem heutigen Eritrea aus, übers Meer kamen, ihn erneut raubten und an das gegenüberliegende Gestade verschleppten".[83] And afterwards they sailed from the Ethiopian coast for four months - this is by the way the same topic of information as given a little later (6o,1) in respect of the voyage from the island to India - in a southeastern direction to the delightful island. Hence considering the journey through Arabia to Ethiopia, the voyage to the island of the Sun, and again the crossing of the ocean to the northeast coast of India, and from there the journey to Patna, Persia, and back to Greek territories a certain reality can be supposed to lie behind this geographical concept, which in some cases sounds utopian,[84] a reality which hints at *Sri Lanka* and with regard to the mentioned group of islands at the Laccedives. But Hellenistic literature [85] was, even though vague-

[83] Cf. Altheim-Stiehl, *Araber*, 84.

[84] Cf. 58,7 where it is stated that the number of these islands is seven and that they are very much the same in size (παραπλήσιαι μὲν τοῖς μεγέθεσι) and at about equal distance from one another (cf. the topic of Euhemerus' "three islands" in *Diod.* V 41,4). Cf. also as regards the utopian topic Schwarz, "Onesikritos und Megasthenes", p.247, fn.65. Megasthenes" 247 65.

[85] Cf. the proximity to India of Euhemerus' island lying out in the ocean to the east (*Diod.*V 42,3 : εἰς τὸ πρὸς ἕω μέρος τοῦ ὠκεανοῦ) and the interesting passage (*Diod.*V 46,1) suggesting the dubious history of the Ceylonese district Rohaṇa.

ly, aware of the existence of Taprobane thus the latter was excellently suited to be placed in an Utopia.[86] Besides it must be kept in mind that in Iambulus there have to be considered - apart from Ctesias and Euhemerus [87] - the accounts of Onesicritus and Megasthenes on the east too. However, as to what is related to those passages which describe the lucky inhabitants, their social order, and the fecundity of the permanently spring-like island, it can be declared that all these sections of the fragment are written in the manner of utopian travel stories.[88] But whether there really passed round Indian narratives of the legendary Laṅkā and whether, to what an extent Indian stories were handed down to the west is indefinable. At any rate it is certain only that e.g. the Rām., the Dv, and the Mv as well interweave in their descriptions of Laṅkā some utopian colours.[89] For that reason Iambulus was able, when

[86] Cf. Schwarz, "Arrian's Indike", 183.

[87] Cf. Brown, "Hellenistic Utopias", 59ff., Ferguson, *Utopias*, 102-10.

[88] Cf. R.Vischer, *Das einfache Leben. Wort- und motivgeschichtliche Untersuchungen zu einem Wertbegriff der antiken Literatur*, Göttingen, 1965, 111f. Cf. also the 'felix India' in *Strab.* II 5, 32 C 130. Nevertheless Iambulus refers to an "echte Utopie mit märchenhafter Ausschmückung" (Simon, "Hellenistische Märchenutopien, 243). And what is more Bloch writes (*Prinzip Hoffnung*, 568): "Jambulos zeigt keine Spielerei, das erhaltene Bruchstück seiner Schrift ist zugleich kräftig, feierlich und fröhlich".

[89] Regarding all that it is not to be ignored that of course utopianism of different provenance and arrangement is present also among the old Indian tradition (cf. R.C.Zaehner, "Utopia and Beyond: Some Indian Views", *Eranos-Jb.* 1963 [*Vom Sinn der Utopie*], 281-309, W.Ruben, "Utopische Gesellschaftskonzeptionen der Volksmassen in der altindischen Gangesgesellschaft", *Das Altertum* 23, 1977, 219-21). One has only to think of the description of the inhabitants of the 'White Island' (*Mbh* XII 322, 9-12), or of the topic of the 'Imaginary Town in the Sky' (*Gandharvanagara* [cf. R.K.Sharma, *Element of Poetry in the Mahābhārata*, Berkeley-Los Angeles, 1964, 119f.]), or of the *Uttarakuru*-complex (cf. *E.R.E.* II 698-700, J.D.P.Bolton, *Aristeas of Proconnesus*, Oxford, 1962, 98 ff. , (cont. p. 49).

proceeding from western or even eastern reports [90] on Ceylon, to compose his utopian mosaic.

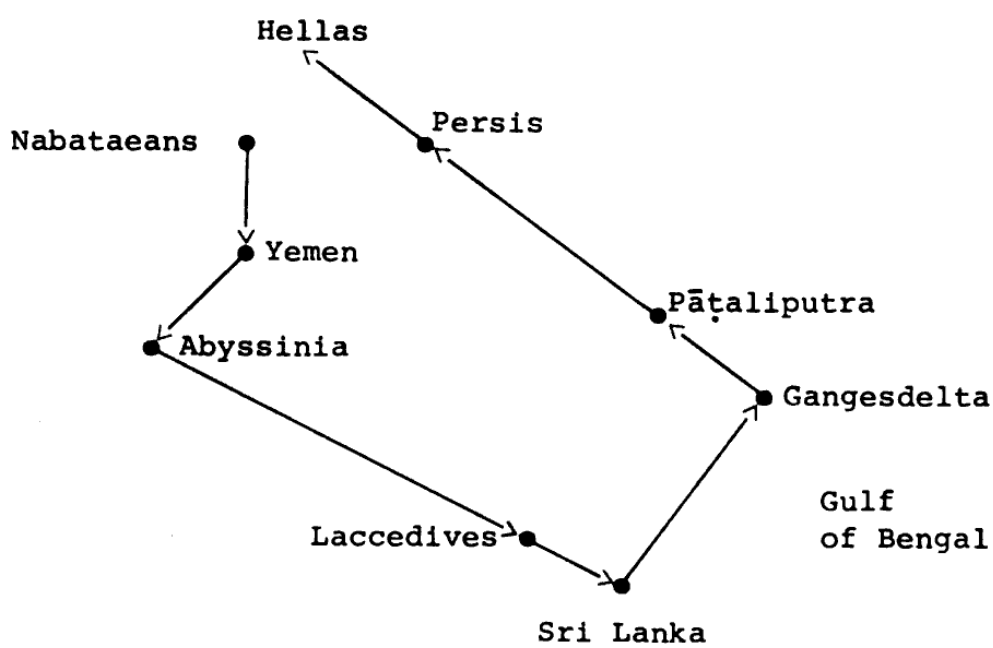
We can omit as well the representation of the social utopia of the island of the Sun as the inquiry into the topic of this fabulous country because all that does not affect the subject in question. In any case, at the end of the fragment (6o,1-3) we are told that Iambulus and his comrades (οἱ περὶ τὸν Ἰαμβοῦλον) [91] who remained there for seven years (again a topical number) were ejected as being bad characters (ὡς κακοῦργοι καὶ πονηροῖς ἐθισμοῖς συντεθραμμένοι). And again they had fitted out their boat - which was the same πλοιάριον as described in 55,3 - and sailed again for four months (cf. 55,6) across the ocean.

89 (cont.)
B. Gatz, *Weltalter, goldene Zeit und sinnverwandte Vorstellungen*, Hildesheim, 1967, 196f., P. Lindegger, *Griedchische und römische Quellen zum peripheren Tibet* I [Opuscula Tibetana 1o], Rikon-Zürich, 1979, 25, 167 f., 182), or of the enraptured description of *Laṅkā* (*Rām* V 2, 46 - 3, 16), or of that of the *Laṅkādīpavara* (*Dv* I 17,VIII 13,XII 19,35), or of that of the "excellent *Laṅkā*-island" (*Dv* I 17-22,XVII 1-2, 79-8o), or even of that of the *Giridīpa* in all its displayed splendour (*Dv* I 67-7o,78). All these are descriptions which on account of their utopianism might have stood sponsor to Iambulus himself. But Diodorus' epitome should also be interpreted with regard to the metaphorical expressions and motives in connection with those archetypical narratives of Ctesias, the Gymnosophy in the Alexander-historians, Hellenistic utopias, the Alexanderromance, and also by looking at the resumption of the theme in Lucian and at last by comparing the Taprobane-passage in Pliny (n.h.VI 81-91) and the paragraphs on Sielediba in the XIth book of Kosmas Indikopleustes.

90 Cf., e.g., the various ἐμπορικὰ διηγήματα (cf. Rohde 256, fn.1).

91 One should notice here the plural compared with 55,2-3! But in 6o,2 again *one* comrade is mentioned. Therefore the comrades might stand by all known odds for those inhabitants of the island who in the course of time followed the foreigners and *their* conception of life.

After all they were shipwrecked on a sandy and marshy shore of India (κατὰ τὴν Ἰνδικὴν εἰς ἄμμους καὶ τεναγώδεις τόπους), which might match the delta of the river Ganges. But on the occasion of that Iambulus' comrade (ὁ μὲν ἕτερος αὐτῶν) lost his life and the adventurer himself escaped to a certain village (κώμη), from which he was brought by the natives into the presence of the king at Pāṭaliputra (πρὸς τὸν βασιλέα εἰς πόλιν Παλίβοθρα), a city which was distant a journey of many days (πολλῶν ἡμερῶν ὁδός) from the sea. The king was indeed friendly to the Greeks (φιλέλλην) - as was attested also by the policy of Candragupta, Amitraghāta-Bindusāra, Aśoka and Milinda-Menandros - and was devoted to learning (παιδείας ἀντεχόμενος) - a topic having already occured in connection with Alexander and Milinda. Therefore Iambulus, being highly educated himself, was considered by the *rājā* worthy of a cordial welcome (μεγάλης ... ἀποδοχῆς), a scene which one could vividly imagine according to the accounts of Megasthenes and the Miln. Finally, the Graeco-Nabataean utopian is said to have got safe conduct (ἀσφάλεια) - one has only to recall the attendants of Aśoka's *dharmamahāmātrāḥ* [92] - and to have passed over into Persia first of all and later on into Greece. Cf. with regard to Iambulus' itinerary the following diagram :

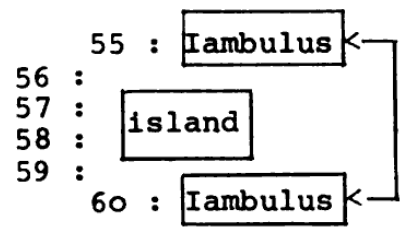


Diodorus (II 60,3) declares in conclusion that Iambulus added to his account not a few facts about India of which other authors were ignorant (καὶ περὶ τῶν κατὰ τὴν Ἰνδικὴν οὐκ ὀλίγα συνετάξατο τῶν ἀγνοουμένων παρὰ τοῖς ἄλλοις). But that seems to refer to facts which exceeded the hitherto generally known reports on the subcontinent. Therewith, however, Diodorus might give to understand that in Iambulus' story there was other and more extensive information than e.g. in Megasthenes' account, information which perhaps went even back to the end of the Mauryan epoch. But the opinion of Lucian (ver.hist.1,3) is sufficient to make us understand that Iambulus embellished all this romantically as was also characteristic of the style of Ctesias. Therefore considering Diodorus' hint to Iambulus' full storey one can realize the crumbly condition of the fragment's 'Buntschriftstellerei'. Attention should be paid to the fact in what way the theme changes within a certain passage, and for no obvious reason, only because the epitomator is interested elsewhere (cf. e.g. 57,1-2; 58,1 compared with 58,2-5; 58,6 compared with 58,7; 59,2.8). To this the seven islands can be added (cf. 58,7; 59,7), which are mentioned without any preparation as to the contents or the incoherent change in the number of Iambulus' comrades. In any case it can be demonstrated on the other hand, that what matters in the epitome of Diodorus is : the description of the delightful life of the inhabitants of the utopia together with all the miracle-like accessories [93]. On the other hand,

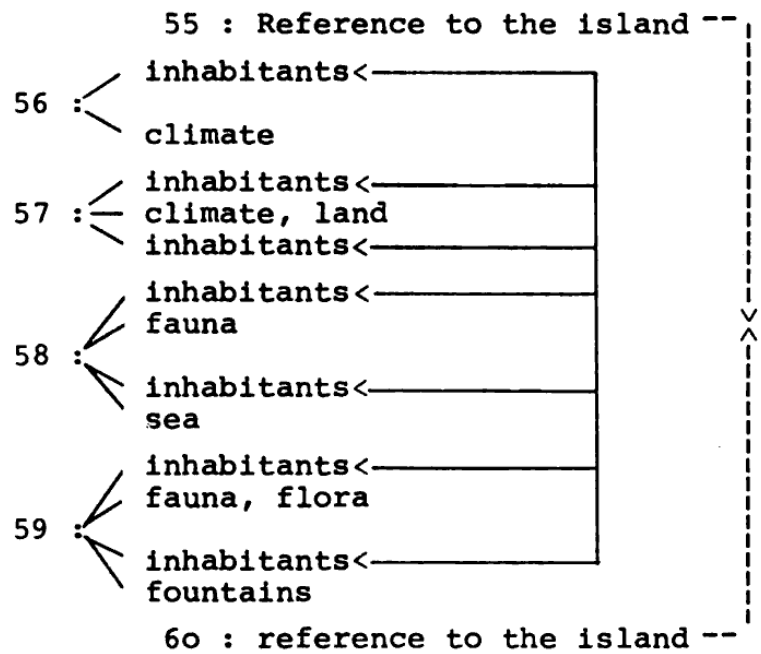
[92] Cf.Schwarz, "Die Griechen und die Maurya-Dynastie", 306.

[93] Many romantic motives in the utopia correspond with that one in Plin.n.h.VI 24,81-91, Solin.53,1-3o Mommsen,Ps.Pallad.I 4-6,1o-14, Fa-hsien (cf.H.A.Giles,*The Travels of Fa-hsien* [399-414 A.D.], or *Record of Buddhist Kingdoms*, 3rd edn., London,1959, 66ff.), Hiuen-Tsiang (cf.Beal II, 2nd edn., 235ff.), the famous *Epistola Alexandri ad Aristotelem*, other Miracle-Letters and the Alexander-romance. Cf., e.g., M. Feldbusch, *Der Brief Alexanders an Aristoteles über die Wunder Indiens*. Synoptische Edition, Meisenheim,1976,Ep.12a,Ps.-

it becomes apparent that Iambulus' departure for the island of the Sun and his return to Greece served as setting to the main part of the utopia, that is the delineation of the island. Cf. the diagram :



In the chapters referring to the island (56-59) it can be shown in spite of their non-uniform performance that the description of the island itself (11 paragraphs) was unimportant in comparison with that one of the inhabitants (17 paragraphs). Cf. the diagram :



93 (cont.)
Kall.12b,Ep.2oa,22a,24a,1o8a,Ps.-Kall.Arm.136a,Iul.Val.137a (in respect of the questions connected with that theme cf.L.L.Gunderson, *Alexander's Letter to Aristotle about India*, Meisenheim,198o, 48-122). Of course later on also can be found such motives in Thomas

Consequently Diodorus [94] was not primarily interested in geographical and ethnographical material [95], although Iambulus could offer various things in that direction.

The conclusion that Iambulus' island of the Sun refers to Taprobane - Dioscorida-Socotra [96] is out of the question, considering not only the geographical but also the historical details - results especially from the route to the island and from there to Patna. Be that as it may, the allusion to the philhellenism of the rājā and the safe conduct by which Iambulus was escorted have to take for granted the relations of the Mauryas to the west, or, what is more, the new information in Diodorus (II 60,3) points even to post-megasthenian material. Thus with regard to the historically indispensable first stages - Onesicritus, Megasthenes, Aśoka -

[93] (cont.)
More's 'Utopia' (cf.B.Kytzler,"Marginalia Utopica. Acht Beobachtungen zur Utopia des Thomas Morus [1478-1978]",in: G.W.Bowersock-W.Burkert-M.C.J.Putnam [ed.], *Arktouros. Hellenic Studies presented to B.M.W.Knox on the occasion of his 65th Birthday*, Berlin-New York,1979,447-60).

[94] Considering the way Diodorus abridged Iambulus' romance one fact must not to be overlooked, a fact which becomes more and more intelligible by research: Comparatively speaking Diodorus handles the extant material independently and with a certain self reliance (cf.J.M.Bigwood,"Diodorus and Ctesias", *Phoenix* 34,1980, 195-207).

[95] Nevertheless one can recognize even by Diodorus' epitome the topical structure of an ethnological account, whose typology was not changed very much until the late antiquity (cf.W.Richter,"Die Darstellung der Hunnen bei Ammianus Marcellinus [31,2.1-11]", *Historia* 23,1974,372f.).

[96] Cf. F.F.Schwarz,"Kosmas und Sielediba", *ZivAnt* 25,1975, 472,fn.28. According to Iambulus' account, if we assume that the adventurer started his voyage from Socotra to the mouth of the Indus, the Nabataen would have passed Greek territories in the Indus valley; but that would certainly have been mentioned. Besides the presumable route: Socotra ⟶ Kathiāwār ⟶ Indus ⟶ Ganges plain ⟶ Patna ⟵ Persis ⟵ Hellas is too cracked to be really probable.

and the exemplifying parallels in the KA, the Miln,the Pāli Chronicles, and in respect of the sea-routes to the east[97], which must have been gradually developed already before the first century B.C. [98] one might not be misguided in dating Iambulus in the beginning of the second century B.C.[99]. This dating corresponds approximately with the reign of the later Mauryas of eastern India, *Śatadhānu* and *Bṛhadratha*.[100]

7. RESULTS OF THE TREATISE

To sum up : (a) A large geographical spectrum can be shown by Aśoka's inscriptions, which not only include the Hellenic west but also the southern peninsula of India and Sri Lanka. The latter is to be proved by the method of naming the various countries and nations. (b) The KA knows of south India and Ceylon, rating them as lucrative trade partners, but it knows also in all probability of Alexandria in Egypt. (c) The Miln affords an insight into a large scale of topography, including even China, Burma, South India and Egypt. Thus the knowledge of Sri Lanka can be taken for granted. (d) Dv and Mv emphasize Laṅkā's pre-eminence

[97] Cf. Srivastava, *Trade*, 95-118, Dihle, "Der Seeweg", 7ff., Chandra, *Trade*, 90-108.

[98] Cf. L.Mooren, "The Date of SB V 8036 and the Development of the Ptolemaic Maritime Trade with India", *AncSoc* 3, 1972, 127-33.

[99] Cf. v.Wissmann, "Die Südgrenze", 322 (=third or second century B.C.), A.Lesky, *Geschichte der griechischen Literatur*, 3rd edn., Bern-München, 1971, 962. The opinio communis supports the third century B.C. (cf. Kroll, 683, Altheim-Stiehl, *Araber*, 86, 92, Röllig, 1309, H.J.Rose, "The Date of Iambulos", *ClQ* 33, 1939, 9f. [first century B.C.], W.W.Tarn, "*The Date of Iambulos. A Note*", *ClQ* 33, 1939, 193 [third century B.C.], Ferguson, *Utopias*, 126).

[100] Cf. Thapar, *Aśoka* 182-212, Chattopadhyaya, *Bimbisāra* 193-206, M.V.Dev Mohan, *The North-West India* 55-63, Mohan, "The Mauryas after Aśoka", *VIJ* 15, 1977, 69-75, Alahakoon, *The Later Mauryas*, 111-20.

and the foreign contacts of Duṭṭhagāmaṇi. (e) In regard of the localization of Iambulus' island Sri Lanka can be named above all because Taprobane in those times was situated on the periphery of geographical ideas and was therefore particularly suited for placing it in an utopia. But also in Indian literature the Laṅkādīpa bears, here and there, the imprint of utopianism, which resembles in various ways Diodorus' epitome. The examination of the Iambulus-fragment brings to light along general lines the adventurer's itinerary, demonstrates the tendency of the epitomator, who prefers the description of the utopia rather than that of the geographical and historical frame of the story, and justifies by comparison with old Indian sources the dating of Iambulus at the end of the Mauryan epoch.

Addenda :

With regard to note 1 cf. now also W.Erzgräber, *Utopie und Anti-Utopie in der englischen Literatur. Morus, Morris, Wells, Huxley, Orwell,* München. 1980. Important for the question of the historicity of the Pāli chronicles (cf. note 66) is F.Perera, *The Early Buddhist Historiography of Ceylon,* Göttingen, 1979, esp. 109-11. Referring to the *gandharvanagara*-complex (cf. note 89) cf. in some respects also Alexarchus' Ouranopolis in *Athenaeus* (III 98 D). And in consideration of the 'insular utopianism' in Iambulus (cf. note 93) one might also compare some motives within the description of the aborigines of the 'New World' in the second chapter of Carlos Fuentes' colossal romance *Terra nostra,* Mexico, 1975.

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The following abbreviations have also been used:

ANRW : *Aufstieg und Niedergang der römischen Welt*, hrsg. v. H.Temporini - W.Haase, Berlin - New York

Arr : *Flavius Arrianus* I-II, ed. A.G.Roos, Leipzig, 1967

ClQ : *Classical Quarterly*, Oxford

CRAI : *Comptes Rendus de l'Académie des Inscriptions et Belles-Lettres*, Paris

Diod : *Diodorus of Sicily*, vol.II-III, by C.H.Oldfather, Cambridge, Mass. - London, 1935-1939

Dv : *The Dīpavaṃsa: An Ancient Buddhist Historical Record*, ed. H.Oldenberg, London, 1879

EaW : *East and West*, Rome

GB : *Grazer Beiträge*, Graz-Horn

IBK : *Innsbrucker Beiträge zur Kulturwissenschaft* Innsbruck

JAH : *Journal of Asian History*, Wiesbaden

KA : *The Kauṭilīya Arthaśāstra* I-III, 2nd ed., by R.P.Kangle, Bombay, 1969-1972

KlPauly : *Der kleine Pauly. Lexikon der Antike*, Stuttgart

Mbh : *The Mahābhārata*. Text as Constituted in Its Critical Edition I-V, Poona, 1971-1976

Mv : *The Mahāvaṃsa*, ed. W.Geiger, London, 1958

Miln : *The Milindapañho Being Dialogues Between King Milinda and the Buddhist Sage Nāgasena*, ed. V.Trenckner, London, 1962

Mnem : *Mnemosyne*. Bibliotheca Classica, Leiden

PP : *La Parola del Passato*, Napoli

Peripl.m.r. : *Le périple de la mer Erythrée*, per H.Frisk, Göteborg, 1927

Ps.Pall. : J.D.M.Derrett, "The History of 'Palladius on the Races of India and the Brahmans'", *Class. et Mediaev.* 21, 1960, 64-135

Ptol. : *La géographie de Ptolémée*. L'Inde (VII 1-4), par L.Renou, Paris, 1925

Rām : *The Vālmīki Rāmāyaṇa* I-VII, Baroda, 1960-1975

RE : *Paulys Real-Encyclopädie der Classischen Altertumswissenschaft*, Stuttgart

VIJ : *Vishveshvaranand Indological Journal*, Hoshiarpur

ZivAnt : *Živa Antika*, Skoplje

ANCIENT IRANIAN ASIA

Harold W. Bailey

The Iranian linguistic tradition which was dominant in Central Asia before the emergence of the Turks into the lands of the Tarim Basin and the region from Yüan (probably Farghānah) westwards to the Parthian empire has become increasingly familiar since the latter part of last century and during this century over the past eighty years. But there are great difficulties in the interpretation of the non-religious texts.

There are many commercial documents [1] which resist complete explanation.

In these documents there are the usual technical terms: *pīḍaka-* 'letter'; *pāḍaka-* 'document covered' with the carriers *pāḍaka-baraa-; pyays-* 'to seal'; *pramāna-* 'authoritative'; signature *haṃguṣṭa-* 'finger-mark'; witnesses (*byāvanä*). The voucher is known under the Chinese name *kṣau*, plural *kṣauva* (Chinese *ṭṣ'au*) [2]. There is also the *bisalū* 'deposit' and the *varāysai* 'earnest money'.

In the judicial sphere there is the *pharṣavatā-* 'judge'; the penalty Buddhist Sanskrit *daṇḍa-* and *daula-* 'stick', called also in Chinese plural *phąuva* as in KH 5.3, no. 5,6 *pąjse*

[1] Facsimiles of some are in H.W.Bailey, *Saka documents*, portfolios, and text volume. London, 1960. Transliterations are in *Khotanese Texts II-V*.

[2] *Khotanese Texts* (KT) 4, p. 54.

phguva hvera himārä 'severe penalties are to be suffered', parallel to KT 3.138, no. 72,8 *dirsä daula nāste* 'he receives thirty strokes'.

In one document (KT 4, no. 2) the wife of Budasaṃga petitions the *hiyaudä āmācä ṣṣau* (lord, ruler, governor) Śattum about the seizure of her sons and a daughter. She has "no refuge except in the *hiyauda-* ('lord')". At the foot of the document the *ṣṣau* Śadū orders restitution, dating the document on the day the *parau* 'order' was issued.

The Kroraina documents of the Kingdom of Shan-shan of about 3oo of our era are full of similar details. Here an old error can be corrected. The Kroraina word *parabula-*, *paraṃpula-* 'surroundings' of a city was traced by F.W.Thomas (Acta orientalia 14,1o9-111) to the Greek word παρεμβολή. Other Greek words as *satera* and *trakhma*, στατήρ and δραχμή occur, so that this was plausible. I had accepted this in Transactions of the Philological Society 1945, 9-11. In Ossetic however a connected word is attested in the form Digoron *fālämbulai* [3], Iron *ālfāmbīlai* 'surroundings' with *fāl-* from *pāri-* (as we have *fäl-* from *pari-*). An older form is in the Liturgy of 1821 (with *sä* 'of them'), p. 45 *salp'alamblai* 'around them'. But a Greek word in Kroraina does not come into consideration with Ossetic.

The word *parabula-* is in fact to be taken as Iranian. The same meaning is in Parthian *prybr*, rendered by Greek περίχωρος in the inscription of Shāhpuhr I in many places. The Persian text has *prw'r parivāra-* where the *-v-* may have replaced -β-. The same Parthian word has given Armenian *parberakan* 'circular, periodical' (the *-er-* is an older Armenian way to represent Iranian *-ăr-*). In *parabula-* the *para-* has replaced *pari-* and *-ba-* (or -β*a-*) and labialized the *-a-* to *-u-* after *b-*. The other form has *-mp-* in place of *-b-*.

[3] V. Abaev, *Istoriko-ëtimologičeskij slovarj osetinskogo jazyka*, where no certain connexion is offered, but an uncertain *pāram-puram*.

Sogdians had founded merchant colonies [4] across Asia on the Silk Route. Some of their ancient business letters have reached us from the second century of our era. Here too great difficulties of interpretation are encountered.

There is one important Sogdian problem to which a solution can be given [5] . In Sogdian, both Buddhist and Manichean, there is a word ''δδ-, 'δδ- . In the Buddhist texts the word ''δδ-βγ *āϑ( ) -βaγ renders the name of the *deva*-god *Śakra-* 'the strong one', the epithet which replaced the ancient name (with the same meaning) of *Indra-* (from the base *nar-*). The phrase became *śakro devānām indraḥ* 'Śakra king of the *deva*-gods', in the Khotan Saka translated *śśakr gyastānu rre* with *rre* 'king' for *indra-*. The phrase occurs in the north-west Prakrit form in the Seṇavarma inscription[6] 1o *śakro devaṇidro.*

Previously there have been two proposals. E. Benveniste (*Textes sogdiens* p. 239) proposed an Iranian equivalent of Bud. Sanskrit *ādi-* 'beginning' as indicating a supreme god. I had thought of a connexion with Avestan *a ϑ-* 'to terrify' and I find this connexion in H.Humbach, *Monumentum Nyberg I* 398 ff. from āϑi- 'terror'. But in Manichean there is also the name 'δδ-m't *aϑ( )-*mātā-* 'the mother of the living' and 'mother of the primal man (Ohrmezd)' where terror is out of place.

The sense of ''δδ- should be 'strong' to render *śakra* - 'strong'. Of the mother 'strong in nurture' could be intended. The base is then the ϑā- in Khotan Saka *thākā-* 'force' parallel to *hauva* 'force'. The Christian Sogdian has ϑty'q 'strengthening' as 'heartening' (rendering Syriac *lbb*) with abstract suffix *-y'q* to ϑt- from the base ϑā- . The Avestan

[4] P. Pelliot, *Journal Asiatique*, 1 (1916), p. 111-123.

[5] The bibliography is given by W. Sundermann, *Altorientalische Forschungen* 6, p. 1o2 and 129-13o.

[6] *JRAS*, 198o, p. 21 ff.

has an epithet of cattle ϑātar- in the derivative ϑātairyō 'strengthening' fodder. If the base zan- : zā- 'bear young, be born' is compared, the ϑā- will come from ϑan- : ϑā-, and so be traceable back to Indo-European (s)t(h)en- familiar in Greek σθένος 'strength', ἀσθενής 'weak' and verb σθένω , which has been isolated.

A considerable amount of Khotan Saka remains inaccessible. Of the language of Kuci it is reported that three quarters are unpublished. Of Sogdian a great deal is not yet in print. I was shown recently a piece of Sogdian in Brāhmī script.

ON THE IDENTIFICATION OF BUDDHIST SCHOOLS IN EARLY SRI LANKA

Heinz Bechert

New interpretations of an inscriptional reference to four Buddhist *nikāyas* (lit. "groups", i.e. the "schools" or "sects" of the *Sangha*) in mediaeval Ceylon have been proposed by R.A.L.H. Gunawardana[1] and by D.J. Kalupahana.[2] These two authors arrive at opposite results, though, at first sight, both seem to be able to quote rather convincing arguments in favour of their respective theories. Thus, a reconsideration of the subject seems appropriate.

It is well-known that Buddhism spread to Sri Lanka in the form of *Theravāda* or *Sthaviravāda*, and that the Mahāvihāra in Anurādhapura became the center of this orthodox school. However, there was a first schism in the Ceylonese *Sangha* during the reign of king Vaṭṭagāmaṇi Abhaya (29-17 B.C.) when a group of monks residing in the newly founded Abhayagirivihāra formed a separate *nikāya*. This "group" became known as the *Abhayagirivihāravāsin* or the *Dhammarucika* monks. During the reign of Mahāsena (274-301 A.D.) another schism arose from which the *Jetavanavihāravāsin* or *Sāgalika* school originated. From this period onwards, the *Sangha* in Lanka is described as consisting of "three *nikāyas*". The amount of relevant information found in the

[1] R.A.L.H. Gunawardana, "Buddhist Nikāyas in Mediaeval Ceylon", *The Ceylon Journal of Historical and Social Studies* 9 (1966), pp. 55-66.

[2] D.J. Kalupahana, "Schools of Buddhism in Early Ceylon", *The Ceylon Journal of the Humanities* 1 (1970), pp. 159-190.

ancient chronicles is rather limited, and the additional details recorded in later sources (*Mahāvaṃsaṭīkā*, *Nikāyasaṅgrahaya*, etc.) are partly contradictory and do not necessarily reflect the original facts. However, it remains beyond doubt from the evidence found in the chronicles and in other sources that these three *nikāyas*, viz. the *Mahāvihāravāsin*, the *Abhayagirivihāravāsin* and the *Jetavanavihāravāsin* together formed the *Sangha* of Ceylon until king Parākramabāhu I (1153-1186) succeeded in reuniting the Order. All *bhikkhus* of the Island then had to accept the Mahāvihāra tradition.[3]

There is an interesting document from mediaeval Ceylon which was not taken into consideration in most of the modern studies on the religious history of the Island though it has already been published in 1904 in Volume 1 of the *Epigraphia Zeylanica*.[4] It was erroneously called the *Jetavanārāma* Sanskrit Inscription, and it was discovered in 1894 in a monastic compound north of the "Twin-ponds" in Anurādhapura. This compound seems to have formed part of the Abhayagirivihāra. The inscription is written in Sanskrit language and in a North-Indian script which has been determined as being similar to that used in the area of Bihar and Bengal during the ninth century. These features are rather unique for an inscription from Sri Lanka, and so are certain architectural features of the ruined monastic structure near the find-spot of the inscription which reminded archeologists of similar structures excavated in Bengal. The inscription contains regulations for

[3] For details, see H. Bechert, "Zur Geschichte der buddhistischen Sekten in Indien und Ceylon", *La Nouvelle Clio*, 7-9 (1955-57), pp. 311-360; Wilhelm Geiger, *Culture of Ceylon in Mediaeval Times*, Wiesbaden, 1960, pp. 207-210. See also H.G.A. van Zeyst, "Abhayagirivāsins", *Encyclopaedia of Buddhism*, vol. 1, Colombo, 1961-1965, pp. 25-28.

[4] D.M. de Z. Wickremasinghe, "Jētavanārāma Sanskrit Inscription", *Epigraphica Zeylanica*, vol. 1 (1904-1912), pp. 1-9.

the administration of a particular *vihāra*, and thus it would be termed a *Vihāra-Katikāvata* in later terminology.[5]

The first part of the inscription which must have contained historical and general information was not recovered. Therefore, it is difficult to establish the context of the regulations within the structure of the *Sangha*. The passage of the inscription which has relevance for the history of the *nikāyas* runs as follows[6]:

> *cāturmahānikāyeṣu pañcaviṃśatiḥ pañcaviṃśatis tapasvinaḥ tena śatan naivāsikānāṃ. catvāriṃśat śāstrābhiyuktās tapasvinaḥ. nikāyabhedam vināpi gṛhītaniśrayāḥ ...*
>
> "[There shall reside] twenty-five monks from each of the four great fraternities (*nikāyas*), thus [making] one hundred residents [in all]. [Of these, there shall be] forty monks who are versed in the *Śāstra*. [There shall be] those who have received tutelage void of any sectarian difference ..."

M.B. Ariyapala, without specifically referring to this inscription, argues that besides the *Mahāvihāravāsin*, there were three other "well established *Nikāyas*" at that time, viz. *Dharmaruci* (*Abhayagirivihāravāsin*), *Sāgalika* (*Jetavanavihāravāsin*) and *Vaitulyavādin* (*Mahāyāna* monks).[7] This argument is based on evidence of one particular manuscript of the *Dambadeṇi-Katikāvata* and of the *Nikāya-saṅgrahaya*. These are sources of much later origin, viz. from a period, when the old divisions of the *Sangha* had ceased to exist long ago.[8]

[5] See Nandasena Ratnapala, *The Katikāvatas, Laws of the Buddhist Order of Ceylon from the 12th century to the 18th century*, München, 1971, pp. 7 f. All other Ceylonese inscriptions of this type are written in Sinhala language and script.

[6] Wickremasinghe, loc. cit., p. 5 (text) and 9 (translation).

[7] M.B. Ariyapala, *Society in Mediaeval Ceylon*, Colombo, 1956, pp. 229 f.

[8] The reading in the British Museum copy of the *Dambadeṇi-Katikāvata* is not confirmed by any of the other manuscripts of this text. The correct

There is, unfortunately, still much confusion on the nature of Buddhist "sects" or "schools" in spite of the enormous amount of writing that has been done on "Buddhist sects". Many of the publications dealing with this subject can be described as more or less detailed reproduction of the information found in the original sources without a critical interpretation. This information is rather limited, and in many aspects it is contradictory. Most of the sources on *nikāyabheda* are comparatively late compilations in which material from several different chronological strata was combined into descriptions of the ramifications of the so-called sects. It seems that the methods generally applied to these problems are not yet fully adequate. In the case of the most recently published monograph on the subject, viz. the new edition of "Buddhist Sects" by Nalinaksha Dutt, this inadequacy is particularly striking to the observer.[9]

A key to the correct interpretation of the sources lies in the fact that there are different types of divisions in the *Sangha*, and that, depending on the context, one and the same term can be applied in different meaning. Naturally, neither the English word "sect" nor the word "school" can be considered an adequate translation of the terms *nikāya* and *vāda*.

In the first instance, *nikāya* is a term of Buddhist ecclesiastical law. As such, it denotes a group of monastic communities that make use of the same particular redaction of the *vinaya* texts and mutually acknowledge the validity of their *upasampadā*. Such "groups" have developed already in the period before king Aśoka, when the diversification of rules of monastic

8 (cont.)
reading (Ratnapala, loc. cit., p. 46) is clearly *tun nakā* "three *nikāyas*". The author of the *Nikāyasaṅgrahaya*, Devarakṣita Jayabāhu Dharmakīrti, clearly combined material drawn from different sources when he referred to *Dharmaruciya*, *Sāgalika* and *Vaitulyavādiya* as *nikāyas* (*Nikāyasaṅgraha*, or *Sāsanāvatāraya*, Colombo, 1922, p. 2o), and this note cannot be quoted against the clear evidence of the earlier sources.

9 Nalinaksha Dutt, *Buddhist Sects in India*, 2nd ed., Delhi, 1978. See my review in *Orientalistische Literaturzeitung* (forthcoming).

discipline began. It is important to note that the separation of these groups generally took place in a way in which the formal violation of the injunction against *sanghabheda* (splitting an order) would be avoided. This injunction belongs to the earliest stratum of *vinaya* rules. As reasons for *sanghabheda*, disagreement on *vinaya* questions is recorded, and there is no reference to dogmatical controversies.[10]

It is evident that the definition of a *nikāya* in this sense has nothing to do with the profession of particular doctrinal or dogmatic opinions. At a later period when *Mahāyāna* as a new religious program spread in Indian Buddhism, its new teachings could be accepted in various *nikāyas*, and in many cases hinayanistic and mahayanistic monks remained members of one and the same monastic community. This fact was already stated by L. de La Vallée Poussin in 1930.[11] Mahayanistic ideas were also accepted by certain sections of the *Theravādin* of Ceylon. I have shown elsewhere that this was not only the case with the *Abhayagirivāsin*, but also in the *Mahāvihāra* faction before the first suppression of *Vetullavāda* (i.e. *Mahāyā-*

[10] For the difference between *sanghabheda* and *nikāyabheda*, see H. Bechert, "The importance of Aśoka's so-called Schism Edict", *Felicitation Volume for Prof. J.W. de Jong* (forthcoming) and "Aśokas Schismenedikt und der Begriff Sanghabheda", *Wiener Zeitschrift für die Kunde Süd- und Ostasiens* 5 (1961), pp. 18-52. In the passages *ayaṃ dhammo ayaṃ vinayo idaṃ satthu sāsanaṃ* (*Vinaya*, vol. 2, p. 205) and *bhikkhū adhammaṃ dhammo ti dīpenti* (*Vinaya*, vol. 1, p. 354; vol. 2, p. 88, etc.) the word *dhamma* does not refer to the "teaching" of the Buddha in general, but specifically to the "law" of the Buddha as laid down in the *Vinaya*. For details, see my above-quoted contributions.

[11] L. de La Vallée Poussin, "Opinions sur les relations des deux véhicules au point de vue du Vinaya", Académie royale de Belgique, *Bulletin de la Classe des Lettres et des Sciences politiques*, 5e série, vol.16 (1930), pp.20-39.

na) by king Vohārikatissa in the 3rd century A.D.[12] Later on, however, the *Mahāvihāravāsin* consequently rejected mahayanistic influence, whereas the other two Ceylonese *nikāyas* were more tolerant in this respect.

In any case, however, mahayanistic monks always remained members of an originally hinayanistic *nikāya*, because such membership was a necessary precondition of their membership in the *Sangha*. This was the case outside India too, and it is well-known that the Tibetan *Sangha* follows the tradition of the *Mūlasarvāstivādanikāya*, while the Chinese *Sangha* follows that of the *Dharmaguptanikāya*, as can be clearly seen from their use of the *Prātimokṣasūtra* of these particular *nikāyas*.

There are, however, many examples of monastic communities following the same *vinaya* tradition, but not mutually recognizing the validity of their *upasampadā*. In such cases, these communities belong to different "sub-*nikāyas*" within one *nikāya*. Unfortunately, there is no specific terminology in Buddhist tradition which would always allow us to clearly differentiate between *nikāya* in a narrower sense (i.e. what we would term "sub-*nikāya*") and *nikāya* in the wider sense of the word.

The underlying principles of Buddhist ecclesiastical law remained basically unchanged until today in *Theravāda* tradition. Thus, the present-day *Theravāda* which is also called *Theriya-nikāya* is subdivided into 3o autonomous *nikāyas* (in the narrower sense of the word) in Sri Lanka.[13] Surprisingly, however, almost every Buddhist of Sri Lanka would invariably answer a

[12] H.Bechert, "Buddha-Feld und Verdienstübertragung: Mahāyāna-Ideen im Theravāda-Buddhismus Ceylons", Académie royale de Belgique, *Bulletin de la Classe des Lettres et des Sciences morales et politiques*, 5e série, vol.62 (1976), pp.27-51.

[13] For detailed information on the *nikāyas* in contemporary Buddhism in Sri Lanka see H. Bechert, *Buddhismus, Staat und Gesellschaft in den Ländern des Theravāda-Buddhismus*, vol.1, Frankfurt, 1966, pp. 21o-22o and 263-265.

question about the number of *nikāyas* not by quoting the actual number, but by giving the information that there are three *nikāyas*, viz. *Syāmanikāya, Amarapuranikāya,* and *Rāmaññanikāya*. Monks' associations which comprise *bhikkhus* of different *nikāyas* are also always termed as *trinikāyika*. It is evident that the division of the *Sangha* into three *nikāyas* in Sri Lanka has remained a traditional pattern which is still being preserved in spite of its disagreement with the realities. In order to relate this theory to the facts, all existing *nikāyas* are considered as sub-divisions of one of the three main *nikāyas*. In the *Sangha* of Burma and Thailand, we also find a number of sub-divisions of the *Theravāda-nikāya*.[14]

All three *nikāyas* in ancient and early mediaeval Ceylon are clearly sub-divisions of the *Theravāda* and this implies that they made use of the *Tripiṭaka* in Pali which is still handed down to us, though with some minor variations.[15]

Two wrong notions about the Abhayagiri Sect are found even in some very recent relevant publications, viz. (1) that the *Abhayagirivāsin* handed down their scriptures in Sanskrit, i.e. that they used a Sanskrit recension of the *Tripiṭaka* instead of the Pali canon,[16] and (2) that "all the works belonging to the Abhayagiri were destroyed."[17] I need not discuss again the

[14] See H. Bechert, "The structure of the Sangha in Burma: A Comparative View", *Studies in History of Buddhism*, ed. A.K. Narain, Delhi, 1980, pp.33-42.

[15] See also André Bareau, *Les sectes bouddhiques du Petit-Véhicule*, Saigon, 1955, pp. 243 f. The information that the Jetavanīya reject the two Vibhaṅgas of the Vinaya (Bareau, loc.cit.,p.244) is based on a misunderstanding of a passage in the *Mahāvaṃsa-ṭīkā* by G. Turnour which was perpetuated in other scholarly writings. See below.

[16] This is often repeated from out-dated publications, e.g., by Diran K. Dohaniyan, "Mahāyāna Cult in Ancient Ceylon", *India's Contribution to World Thought and Culture, Vivekananda Commemoration Volume*, Madras, 1970, p.425.

[17] This out-dated view is also repeated by D.J. Kalupahana, "Schools"(see note 2), p.161.

completely unfounded theory of the use of a *Tripitaka* in Sanskrit by the Abhayagiri monks.[18] It is, of course, quite clear that the mahayanistic faction within the Abhayagiri community made use of *Mahāyāna* texts in Sanskrit in addition to the canonical texts of *Theravāda* in Pali, but this was, as we have seen, of no relevance for their position *vis-à-vis* their *vinaya* tradition. The fact that the *Abhayagirivāsa* tradition made use of the Pali *Tripitaka* can be considered as being beyond any doubt.[19]

As far as the second point is concerned, I may refer to the fact that at least three major literary works of the *Abhayagirivāsin* have been discovered so far, viz. (1) a *Vinaya* text named *Upāliparipṛcchāsūtra*,[20] (2) the *Vimuttimagga* by Upatissa, and (3) the *Saddhammopāyana* by Abhayagiricakravartin Ānanda.

According to the *Mahāvaṃsa-ṭīkā* (ad *Mahāvaṃsa* 5.13) the *Abhayagirivāsin* altered meaning and text of the "*Khandaka-parivāra*" of the *Vinayapitaka* when they separated from the *Mahāvihāravāsa* school.[21] The passage in question has been translated by George Turnour (1837) in the introduction of his trans-

[18] See Bechert, "Buddha-Feld" (see note 12), pp.28f.

[19] See also van Zeyst, "Abhayagirivāsin" (see note 3), p.27f.

[20] See Valentina Stache-Rosen, "Das *Upāliparipṛcchāsūtra*, Ein Text zur buddhistischen Ordensdisziplin", *Buddhism in Ceylon and Studies on Religious Syncretism in Buddhist Countries*, ed. H. Bechert, Göttingen, 1978, pp.58-60. This *Upāliparipṛcchā* should not be confounded with other works bearing the same title.

[21] Vaṃsatthappakāsinī, *Commentary on the Mahāvaṃsa (Mahāvaṃsa-ṭīkā)*, ed. G. P. Malalasekera, vol. 1, London, 1935, p. 175 f.: "*Tesaṃ Abhayagirivāsino Laṅkādīpamhi sāsanassa patiṭṭhānā sattarasavassamattādhikesu dvīsu vassasatesu atikkantesu Vaṭṭagāmaniraññe kāle Bhagavato āhaccabhāsita-Vinayapiṭakato Khandhakaparivāraṃ atthantarapāṭhantarakaraṇavasena bhedaṃ katvā Theravādato nikkhamma Dhammarucikavādā nāma hutvā tena Vaṭṭagāmaninā Abhayagirivihāramhi kārāpite tattha te vasiṃsu.*"

lation of the *Mahāvaṃsa*.[22] Unfortunately, the remark that the *Abhayagirivāsin* altered the *Parivāra* section of the *Vinaya* was misunderstood by later scholars as "rejecting" this part of the *Vinayapitaka*, and this wrong interpretation is already found in Kern's work on Buddhism.[23] Though the complete text of the *Mahāvaṃsa-ṭīkā* was edited in Colombo in 1895 in Sinhala script and again in 1935 for the Pali Text Society, this erroneous information was not rectified, but repeated by most later authorities writing on this subject.[24]

Fortunately, Valentina Stache-Rosen has discovered the Chinese translation of a *Vinaya* work named *Yu-po-li wen fu* (*Upāliparipṛcchā*, Taisho No. 1466) which proved to be a close parallel of the *Parivāra* of the *Vinaya* in the Pali Canon. It was evidently translated not from Sanskrit, but from Pali. There can be no doubt that this work represents the text which the *Abhayagirivāsins* included in the *Vinaya* instead of the *Parivāra* which was handed down by the *Mahāvihāravāsin*. It is therefore the work referred to by the remark in the *Mahāvaṃsa-ṭīkā* that the Dharmarucikas changed meaning and text of the *Parivāra*.[25]

P.V. Bapat has already established the fact that Upatissa in his *Vimuttimagga* advocated certain views which were different from those of the *Mahāvihāravāsin*, but held by the *Abhayagirivāsin*.[26] In the meantime, an English translation of the Chi-

[22] George Turnour, *The Mahāvamso*, Colombo, 1837, introduction, p.LIII.

[23] H. Kern, *Der Buddhismus und seine Geschichte in Indien*, transl. H.Jacobi, vol. 2, Leipzig , 1884, p. 421.

[24] See, e.g., M. Walleser, *Die philosophische Grundlage des älteren Buddhismus*, Heidelberg, 1925 , pp. 142f.; A. Bareau, *Les sectes bouddhiques du Petit-Véhicule*, Saigon, 1955, p.243; Louis Renou and Jean Filliozat, *L'Inde classique*, vol.2, Hanoi, 1953, §§ 1950 and 2223; H.H.A. van Zeyst,"Abhayagirivāsins", loc.cit., p.28; and in many other Buddhological writings.

[25] See Stache-Rosen, loc.cit. (see note 20).

[26] See P.V. Bapat, *Vimuttimagga and Visuddhimagga, A Comparative Study*, Poona, 1937, Introduction.

nese text was published.[27] Besides that, a Tibetan translation of the *Dhutaṅga*-Chapter of the *Vimuttimagga* [28] and an abbreviated version of the original Pali text of the work was published.[29]

The *Saddhammopāyana* is considered as a work of the 10th century.[30] H. Saddhatissa has made a comparative study of this work of the *Abhayagiri* school and the *Upāsakajanālaṅkāra* of Ānanda which is a work of the *Mahāvihāravāsins*.[31] He has shown that "there is no fundamental difference in essential doctrine between the two schools but only differences on certain points in their interpretations", and he concludes, that we may see from this comparison "how easily the *Abhayagiri* school could have merged into the school of *Mahāvihāra* by the decree of Parākramabāhu I."[32]

So far, no text could be identified as a work of the *Jetavana* school.[33] However, the *Mahāvaṃsa-ṭīkā* informs us that they used a different version of the *Vinayavibhanga*.[34] It is very probable that there were minor differences with the tradition of the other schools only, as *Parivāra* of the *Mahāvihāra* and *Upāliparipṛcchā* of the *Abhayagirivihāra* were also

27 *The Path of Freedom by the Arahant Upatissa*, translated from the Chinese by N.R.M. Ehara, Soma Thera, and Kheminda Thera, 1st ed., Colombo, 1961; 2nd ed., Kandy, 1977.

28 See *Vimuktimārga Dhutaguṇa-nirdeśa*, A Tibetan Text critically ed. and transl. by P.V. Bapat, London and Delhi, 1964.

29 On this text which was printed in Sinhala script, see P.V. Bapat in *Journal of the Vidyalankara University of Ceylon* 1 (1972), pp. 172-190.

30 S. Paranavitana, "Civilisation of the Period", *University of Ceylon History of Ceylon*, ed. H.C.Ray, vol. 1, part 1, Colombo, 1959, p. 393.

31 H. Saddhatissa, *Upāsakajanālaṅkāra* [by Ānanda], *A Critical Edition and Study*, London, 1965, pp. 59 - 64.

32 Saddhatissa, loc.cit., p.60.

33 See Bareau, *Les sectes bouddhiques*, p. 244.

34 *Vaṃsatthappakāsinī*, ed. G.P. Malalasekera, vol. 1, p.176.

quite similar, as we have seen. Again, this passage was translated by G, Turnour,[35] and from a misunderstanding of this translation by H. Kern,[36] the wrong information that the *Jetavanavāsin* "rejected" the *Vinayavibhaṅga* was perpetuated in later writings on Buddhist sects.[37]

Summing up, there can be no doubt that the "three *nikāyas*" of ancient Sri Lanka are nothing else than three "sub-*nikāyas*" of the *Theravādin*.

In the history of Indian Buddhism we find, however, another type of division within the *Sangha* which we may describe as "doctrinal schools" within *Hīnayāna* Buddhism, and *Theravāda* was, besides being a "*vinaya* sect", one of them. The origination of this new type of Buddhist "schools" began later than the diversification of the *vinaya* traditions. However, many of the already existing "*vinaya* sects" adopted particular dogmatic viewpoints so that, at a certain period, the dogmatic differences could be considered as even more important for the identification of particular *nikāyas* than the original *vinaya* controversies. In Pali tradition, the *Kathāvatthu* is the main document for the knowledge of such dogmatic points of controversy, but the attribution of particular opinions to particular schools is known only from the much later commentary on the text. Most of the sources which were evaluated for the knowledge of the Buddhist "sects" provide information on such dogmatic dissensions. The "groups" professing such views are alternatively termed *vāda* or *nikāya*. It seems that the *nikāyas* did not necessarily accept similar dogmatic opinions with other *nikāyas* or "sub-*nikāyas*" originating from the same *vinaya* tradition and that *nikāyas* originating from different *vinaya* traditions could adopt similar or identical dogmatic views.

As an example, the case of the *Sarvāstivādin* and the *Mūlasarvāstivādin* may be quoted. These two *nikāyas* followed dis-

[35] G. Turnour, *The Mahāvamso*, Colombo, 1837, p. LIII.

[36] Kern, *Der Buddhismus*, vol. 2, p.469.

[37] Bareau, *Les sectes bouddhiques*, p. 244.

tinctly different *vinaya* traditions and they possessed different *Vinayapiṭakas*, but they accepted more or less exactly the same doctrinal views. It seems that the *Mūlasarvāstivādin* have adopted not only the *Abhidharma* of the *Sarvāstivāda* school, but also the name *Sarvāstivāda* from an originally different tradition. Therefore, several modern scholars did not fully recognize the fact that the *Sarvāstivādin* and the *Mūlasarvāstivādin* are *nikāyas* with a distinctly different heritage outside the field of their philosophical views.[38]

This confusion is, however, quite understandable, because it seems to be rather ancient. Because both *nikāyas* propagated the same philosophical views, the word *Sarvāstivāda* was often used as the name of a philosophical school, and in this case there was no need to differentiate. Consequently, the name *Sarvāstivāda* may refer to the *Mūlasarvāstivādin* or the *Sarvāstivādin* in such contexts. Differentiation between them was only necessary, if *vinaya* tradition was concerned. From the philological evidence provided by L. Schmithausen in his important study of the *Sarvāstivāda* and the *Mūlasarvāstivāda* recensions of the *Udānavarga*, it becomes probable that there were two different recensions not only of *vinaya* texts, but also of other canonical works, and it also seems that some of the references to *Sarvāstivāda* texts in classical Buddhist philosophical literature may actually refer to *Mūlasarvāstivāda* traditions.[39]

In the rather late list of the *nikāyas* in works of Vasumitra, Bhavya and others we find several attempts to systematize the filiation of the Buddhist *nikāyas* under particular viewpoints which were rightly characterized as "élucubrations pseudo-historiques" in É. Lamotte's monumental survey of Indian Bud-

[38] This may be said, e.g., of the work by Anukul Chandra Banerjee, *Sarvāstivāda Literature*, Calcutta, 1957. Though he makes a short reference to the two names Mūlasarvāstivāda and [Ārya-] Sarvāstivāda on p. 9, he does not differentiate between the works of the two schools.

[39] See Lambert Schmithausen, "Zu den Rezensionen des Udānavargaḥ", *Wiener Zeitschrift für die Kunde Südasiens* 14 (1970), pp. 47-124.

dhism.[40] Here, we find lists with two to five sub-divisions. Divisions into four main "sects" are recorded by Hsüan-tsang, by I-tsing, by Bu-ston, in the *Bhikṣuvarṣāgrapṛcchā* and in the *Śrāmaṇeravarṣāgrapṛcchā*.[41] These four main divisions are the *Mahāsāṅghika*, the *Sthaviravādin*, the *Sarvāstivādin* and the *Sammatīya*.

Surprisingly, in his contribution on "Schools of Buddhism in Early Ceylon"[42] D.J. Kalupahana undertakes to identify the schools of Buddhism in Sri Lanka on the basis of a list of four Buddhist schools provided by non-Buddhist sources, e.g. in the *Sarvadarśanasaṃgraha* of Mādhava (14th century), viz. *Vaibhāṣika* (*Sarvāstivādin*), *Sautrāntika*, *Mādhyamika* and *Yogācāra*. These are not at all *nikāyas*, but systems of philosophical thought including the two main mahayanistic schools of philosophy. This list, therefore, cannot be used as a basis for the interpretation of divisions in the *Sangha*. Kalupahana has been able to provide arguments to show that certain philosophical views of the *Sautrāntika* and of the *Sarvāstivādin* were known to the authors of the *aṭṭhakathā* and *ṭīkā* literature, but this fact has nothing to do with the existence either of the *Sarvāstivādanikāya* nor the *Sautrāntika* as a *nikāya* in early Ceylon. Furthermore, his argument that the *Abhayagirivāsin* were nothing else than the *Sautrāntika* school of Buddhism in Ceylon, and that the *Jetavanavāsin* were the *Sarvāstivādin* of Ceylon[43] contradicts all historical evidence which he has, unfortunately, totally ignored. The fact that the *Jetavanīya*, the *Abhayagirivāsin* and the *Mahāvihāravāsin* are the three sub-divisions of the *Sthaviravāda* is not only evident from all Ceylonese sources, but it is also recorded in several non-Ceylonese sources, viz., by Bu-ston, in the *Mahāvyutpatti* (no. 9095-9098), and in two *Prcchās* quoted above.[44]

[40] Exhaustive information on this subject is found in Étienne Lamotte, *Histoire du Bouddhisme indien*, Louvain, 1958, pp. 584 - 604.

[41] See Lamotte, loc.cit., pp.596-603.

[42] See note 2.

[43] Kalupahana, loc.cit., pp.180-188.

[44] Lamotte, loc.cit., p.603.

Influence of philosophical thought of several non-*Theravāda* schools - not only of the *Sarvāstivadin* and the *Sautrāntika* - is, of course, traceable in commentatorial and in later *Theravāda* literature, and it is only natural that such influence made itself felt when these schools had become dominating for the development of hinayanistic Buddhist philosophy. There was no objection for a *Theravādin* to study their philosophical works and to accept some of their views as long as there was no conflict with canonical *Theravāda* tradition. Vasubandhu's *Abhidharmakośa* and Buddhist Sanskrit philosophical texts including *Abhidharma* tracts of the *Sarvāstivādin* are quoted as authorities as late as in the *Visuddhimaggamahāsanyaya* which was written by king Parākramabāhu II of Dambadeniya (1236-1271),[45] but Parākramabāhu was, of course, a strict follower of *Theravāda*.

Kalupahana seems to be of the opinion that the above-quoted passage in our Sanskrit Inscription refers to the four main *nikāyas* of ancient Ceylon. We have seen that he identified three of them as "syncretistic *Sthaviravāda*" (*Mahāvihāra*), "*Sautrāntika*" (*Abhayagiri*), and "*Sarvāstivāda*" (*Jetavana*), and for the fourth he refers to a passage in the *Cūlavaṃsa* (5o.68). Here he follows my suggestion to read *Mahiṃsāsaka* (i.e. *Mahīśāsaka*) for *Mahāsaṅghika* in the text,[46] so that the *Mahīśāsaka* is descibed by him as the fourth *nikāya* referred to in the inscription.[47]

From my foregoing remarks, however, it is quite evident that we cannot follow Kalupahana's interpretation of the inscription nor his identification of four *nikāyas* in ancient Ceylon.

R.A.L.H. Gunawardana's interpretation of the inscription seems more compatible with the facts known from our sources. He argues that the evident Indian influence which characterizes this epigraphical document suggest that it was a monastery for "monks from the Bihar-Bengal region who went to Ceylon to

[45] C.E. Godakumbura, *Sinhalese Literature*, Colombo, 1955, pp. 43 - 45.

[46] See below.

[47] Kalupahana, loc.cit., pp.188f.

disseminate their teachings."[48] He is certainly correct in his view that the inscription was set up to regulate affairs of a non-Sinhala monastic community and, therefore, it cannot be expected that the four *nikāyas* mentioned here are the *nikāyas* of the Ceylonese *Sangha*. Thus, it may be assumed that this particular monastery was a royal monastery housing monks of Indian descent. This explanation would fit in with the tradition of Sinhalese kings to invite learned *bhikkus* from abroad and thereby strengthen international connections of Ceylon Buddhism and to enhance its prestige in the world.

Gunawardana proposes to identify these four *nikāyas* as *Mahāsāṅghika, Sarvāstivāda, Sthavira* and *Sammitīya* on the basis of one of the above-mentioned lists of "sects" with four divisions, and he tries to establish their existence in ancient Ceylon by rather complicated, but far-fetched arguments. I am, however, quite sceptic about the possibility to identify these four *nikāyas* as long as no additional evidence is available. Gunawardana's arguments are of a rather speculative nature, and some of his remarks cannot stand a critical examination. To quote one example only, the reference to the study of *śāstras* in the inscription does not necessarily point to *Mahāyāna* texts as suggested by Gunawardana; it could also refer to philosophical works of *Hīnayāna* schools. For lack of evidence, the identification of the *śāstras* remains open, and many other suggestions in Gunawardana's paper are similarly open to debate.

Whereas Gunawardana has not a single reference for the existence of *Sammitīyas* in Sri Lanka, his only evidence for *Mahāsāṅghikas* there comes from the already mentioned stanza 5o.68 of the *Cūlavaṃsa* dealing with religious activities of king Sena I (833-853 A.D.). It is recorded here that "in the *Abhayuttaravihāra* (i.e. *Abhayagirivihāra*) he (i.e. the king) built the *Vīraṅkurārāma* and granted it to the *bhikkhus* of the *Mahāsaṃgha* (i.e. the *Mahāsāṅghikas; mahāsāṅghikabhikkhūnaṃ*)

[48] Gunawardana, "Buddhist Nikāyas" (see note 1), p.66.

and of the *Thera* school (*theriyānaṃ ca*)."[49] In a note in the posthumous edition of Geiger's work on the Culture of Ceylon, I suggested to read *Mahiṃsāsakabhikkhūnaṃ* instead of *Mahāsaṅghikabhikkhūnaṃ*, because there is not a single further reference to the existence of the *Mahāsāṅghikas* in Ceylon, whereas the *Mahiṃsāsakas* (Sanskrit *Mahīśāsakas*) are known from other sources to have existed in ancient Sri Lanka.[50] Gunawardana rejects this emendation on the ground that all manuscripts consulted unanimously agree with the reading in the edition.[51] This argument is, however, not convincing, because W. Geiger has shown in his remarks on textual criticism that all available manuscripts of the *Cūlavaṃsa* are derived from one particular archetype, and that this archetype "was by no means correct", but full of errors which have to be corrected by emendations.[52] A misreading of the word *mahiṃsāsaka* as *mahāsaṅghika* is a very minor change of the text if the Sinhala paleography is taken into consideration, and *Mahāsaṅghika* was definitely the lectio facilior and therefore easily acceptable for any later copyist, even if the correct reading would have been known to him besides the erroneous one. Therefore, I feel that my emendation was not "rash and unwarranted" as long as the passage remains the only instance where *Mahāsāṅghikas* are mentioned to have existed in Ceylon whereas the existence of "*Mahiṃsāsakas*" is rather well documented.[53] The *Mahīśāsakas* seem to have been very closely related to the *Theravādin* as can be seen from their position in most lists of *nikāyas*[54] as well as from the rather close si-

[49] *Cūlavaṃsa*, translated by Wilhelm Geiger, part 1, London, 1929, p. 144.

[50] Wilhelm Geiger, *Culture* (see note 3), pp. 208f., note 1.

[51] Gunawardana, loc.cit., p.56.

[52] *Cūlavaṃsa*, edited by Wilhelm Geiger, vol. 1, London, 1925, introduction, pp. VIIIf.

[53] Cf. also Bechert, "Zur Geschichte" (see note 3), p. 343.

[54] Cf. Lamotte, loc.cit., pp.585, 588, 591f., 603. In several of these instances, they are mentioned in the same group with the Tāmraśāṭīya or Tāmraparṇīya. On the evidence of very late sources, this name has been misunderstood to denote a *nikāya* different from other *nikāyas*

milarity of their *Vinayapiṭaka* with the Pali *Vinaya*.[55] Therefore, it remains highly probable that we schould read *Mahiṃsāsakabhikkhū* in the above-quoted passage of the *Cūlavaṃsa*. There is no proof that the two *nikāyas* referred to in *Cūlavaṃsa* 5o.68 are identical with two of the four *nikāyas* in the inscription, though the paleography and the findspot point roughly to the same period and area.

Considering all these facts, we may state that the three *nikāyas* of ancient Sri Lanka, viz. the *Mahāvihāravāsin*, the *Abhayagirivihāravāsin* (*Dharmarucika*) and the *Jetavanavihāravāsin* (*Sāgalika*) were three subdivisions of *Theravāda*, and that they used the same *Vinaya* and the same canonical tradition with very minor variations (e.g. the *Upāliparipṛcchāsūtra* replacing the *Vinayaparivāra* in the *Tripiṭaka* of the *Abhayagiri* school). It is also safe to assume that the reference to the four great *nikāyas* in the *Abhayagiri* Sanskrit Inscription is not to Ceylonese *nikāyas*, but to monastic communities of Indian origin. Finally, it must be stated that the available evidence is not sufficient to identify these four *nikāyas* and that all attempts to do so remain speculations.

54 (cont.)
known to us, and partly they were identified with the Sankrāntivādin or Sautrāntika on such evidence (Kern, ***Geschichte des Buddhismus,*** vol.2, pp. 365, 497, 555ff.; Bareau, ***Les sectes bouddhiques,*** p. 204). These late lists of "sects" are full of confusion. É. Lamotte has already made it clear that Tāmraparṇīya or Tāmraśāṭīya is nothing but a name for the "religieux de Ceylan" (loc.cit., index, p. 839, with further references), i.e. that the term refers to the Theravādin of Sri Lanka.

55 The Chinese translation of this ***Vinaya*** (Taisho no. 1421) is based on a manuscript which was collected by Fa-hsien in Ceylon; see E. Frauwallner, ***The Earliest Vinaya and the Beginnings of Buddhist Literature,*** pp. 182-184. The ***Vinaya*** of the ***Mahīśāsakas*** shows close relationship with that of the Dharmaguptakas, and these two ***Vinayas*** form a group of three rather closely connected recensions together with the Pali ***Vinaya***. This observation is confirmed by several studies, e.g. by Biswadeb Mukherjee, *Die Überlieferung von Devadatta, dem Widersacher des Buddha, in den kanonischen Schriften,* München, 1966, pp. 133-135 and 138-141.

Part II

CLASSICAL INDIAN LAW (DHARMAŚĀSTRA)

MANU'S OMNISCIENCE:
ON THE INTERPRETATION OF *MANUSMṚTI* II,7

ALBRECHT WEZLER

1. "The smṛti of Manu is", as J.D.M.Derrett has aptly stated,[1] "the most famous of the lawbooks. Its unique quality is its combination of all the features beloved by Hindu society in a treatise on Duty.... It is plain to the western eye that Manu ingested productions of centuries and his present text was not composed in one piece...." "The name of Manu has nothing to do with his fame. The compiler's achievement has brought lustre to the name."

Scholars in the West, though for convenience still using expressions like "the smṛti of Manu" or "Manu says", etc., have learnt to look at this 'lawbook' rather as at another text of the vast "anonymous literature"[2] India has produced. This dismissal of the conceptions the Indians have traditionally formed of the author of this Smṛti is, no doubt, demonstrably justified, but it may at the same time also lead to a total neglect of the Indian tradition itself. Ideas, however, do not at all lose their historical significance when later scholars of a quite different civilisation come to the conclusion that they are phantastic, fanciful, mytho-

[1] *Dharmaśāstra and Juridical Literature* (*A History of Indian Literature*, ed. by J.Gonda, part of Vol. IV), Wiesbaden, 1973, p. 31 and 33.

[2] This term was coined by P.Hacker; cf. his article "Zur Methode der geschichtlichen Erforschung der anonymen Sanskritliteratur des Hinduismus", in: *ZDMG* 111 (1961), p. 483 ff. (= Kleine Schriften, ed. by L. Schmithausen, Wiesbaden, 1978, p. 8 ff.).

logical, etc., i.e. altogether untenable. On the contrary, insights of such kind may and, to be sure, should pave the way for an unbiassed study of these ideas, their development and reception, i.e. the effects they historically had within the civilisation they arose in. I do not, of course, want to denigrate in the least the achievements of Western research as regards the problem of the authorship of the Manusmṛti; but I think the time has come to stress that a study of the indigenous Indian ideas about its alleged author is likely to yield results that are most instructive, i.e. from which one may learn much about Indian culture in general and the tradition of Dharmaśāstra in particular; information we would irresponsibly neglect by merely stating that historically it is nonsense.

There is no dearth of material on Manu, or Manus, material mostly found in religious or mythological texts; on the contrary, as only too often in Indian philology, one is confronted with an embarrassingly abundant variety of heterogenous information (much of which has already been collected by Kane).[3] In order to find one's path through this jungle, it is advisable to concentrate first on the data the Manusmṛti itself contains. Of particular interest in this connection is the frame story ("Rahmenerzählung") of the first Adhyāya; but as it has already been given due attention,[4] another statement of Kane's may be taken up for

[3] *History of Dharmaśāstra*, Vol. I (revised and enlarged), Pt. 1, Poona, 1968, p. 3o6 ff.

[4] Viz. by P. Hacker; cf. his articles "The Sāṅkhyization of the Emanation Doctrine. Shown in a Critical Analysis of Texts", in: **WZKSO** 5 (1961), p.75 ff. (= Kleine Schriften, p. 167 ff.) and "Two Accounts of Cosmogony", in: *Jñānamuktāvalī. Commemoration Volume in Honour of Joh. Nobel*, ed. by C.Vogel, New Delhi, 1963, p. 77 ff. (= Kleine Schriften, p. 389 ff.). - Hacker's important contributions have unfortunately been overlooked by J.W. Laine; cf. his article "The Creation Account in Manusmṛti" in *ABORJ*, Vol. LXII (1981), p. 157-168.

consideration here, viz. that "Manu is said to be omniscient".[5]

2. The reference is to M. II,7, a verse which is indeed usually taken to explicitly state the omniscience of Manu. It runs as follows:

yaḥ kaścit kasyacid dharmo manunā parikīrtitaḥ /
sa sarvo 'bhihito vede sarvajñānamayo hi saḥ //

No variants seem to exist.[6] Bühler translates:[7]

"Whatever law has been ordained for any (person) by Manu, that has been fully declared in the Veda: for that (sage was) omniscient."

It is apparently this interpretation that has found the widest acceptance in the West, and it is the one that is

[5] Op. cit., p. 309. Cf., however, Vol. III, p. 827, where Kane takes M. II,7 to state "that whatever dharma has been ordained for any person by Manu, all that has been entirely declared in the Veda, for the Veda is full of all knowledge."

[6] At least, according to J. Jolly, *Mānava Dharma-Śāstra. The Code of Manu*, London, 1887. - However, in Hemādri's *Caturvargacintāmaṇi* (Vol. III, Pt. 1, ed. by Pt. Yogeśvara Tarkaratna and Pt. Kāmākhyānanātha Tarkavāgīśa, Calcutta, 1980, p. 207) M. II, 7 is quoted with *vihito* in the place of *'bhihito*; yet, this variant is obviously of later origin. -
The fact that Kullūka in commenting on *pāda* c says *sa sarvo vede (pratipāditaḥ)* does not, of course, point to his having read it differently; similarly, Govindarāja's *yaḥ....[kaścid].....dharmaḥ kasyacid.... manunā kathitaḥ sa sarvair vedair uktaḥ....* has to be taken as a paraphrase of the *mūla*, and not as attesting to a variant reading; this applies also to Sarvajñanārāyaṇa's *sarvajñānaprāyo*.

[7] *The Laws of Manu, translated with Extracts from Seven Commentaries* (Vol. XXV, SBE, ed. by F. Max Müller), Oxford, 1886, repr. Delhi, 1964 and 1967, p. 30; cf. also "Introduction", p. XIII.

usually taken to correspond to the intention of the author.[8] There is hardly any need to remark that Bühler in this case, as often in others, too, has relied on the explanation of Kullūka though he does not fail to point out[9] that "the last clause is taken differently by Gov., who explains it, 'for that (Veda) is made up, as it were, of all knowledge'" and that "Medh. gives substantially the same explanation". Indeed, the other commentators seem all to follow Kullūka with the exception of Rāghavānanda, Govindarāja[10] and Rāmacandra, the last one adding a second explanation.[11]

A problem is actually posed only by the final clause, viz. by the very last word *saḥ* which is taken by the commentators to refer either to *vede* or to *manunā*. In fact, no other alternative is really conceivable, for *dharmaḥ* can be safely ruled out in view of the causal particle *hi* and the general content of the verse. Thus it is between two alternatives only that one has to make a reasonable choice. The relative chronology of the different commentators cannot, of course, yield any proof in the matter;[11a]

[8] Cf. e.g. J. C. Heesterman's "Die Autorität des Veda", in: *Offenbarung, geistige Realität des Menschen. Arbeitsdokumente eines Symposiums zum Offenbarungsbegriff in Indien*, hrsg. von G. Oberhammer, Wien, 1974, p. 3o f.; cf. also p. 89 of the same book (G. Oberhammer).

[9] Op. cit.,l.c. footnote.

[10] His explanation is quoted below in part 3, see fn. 28a.

[11] Viz: ... *sa vedaḥ sarvajñānamayaḥ sarvam jānātīty arthaḥ / yad vā sa manuḥ sa sarvajñānamayaḥ /.* - Actually Kullūka himself seems to accept both interpretations; see below, p. 94 f.

[11a] The relative date of some of the commentators is not yet known; but even if the relative chronology of all were known and if, in addition, the earlier commentators would unanimously give one interpretation only and the later ones, in the same manner, the other one, this could not be taken to furnish more than a working hypothesis in favour of the earlier interpretation.

instead one has to pose the following question: is it more probable that the assumed author of the Manusmṛti in the course of time "has become omniscient" or that he, albeit originally conceived of as "omniscient", has later been denied this extraordinary quality? One is admittedly tempted to opt unhesitatingly for the first alternative. Such a decision might, however, be precipitous, at least as long as the specific motive for this change in the conception of Manu has not been discovered.

But before studying the commentators' explanations more closely with the aim of eventually unveiling this motive, one should first examine M. II,7 by itself. One cannot then fail to realize that the predicate *sarvajñānamayo* goes more naturally, as I have already stated elsewhere,[12] with a nonpersonal subject, i.e. with *vedaḥ*. Had the author thought of Manu, one would expect him to have used the expression *sarvajña* instead of *sarvajñānamaya*; and it is worth noting that Kullūka on his part does in effect meet this expectation in that he substitutes the former expression for the latter, only that he gives no explanation for the semantic equivalence thus assumed (see below p. 95).

2.1. The Petersburg Dictionary lists only one more occurrence of the expression *sarvajñānamaya*, viz. "R. 7,23, 1,82", i.e. verse 82 of the first Adhyāya of those inserted after 7.23 (= Vol.7, Appendix I, No.1, line 114 of the critical edition) of the Rāmāyaṇa. It is obvious that here the expression, like *sarvadevamaya*, *sarvabhūtamaya* and *sarvalokamaya* of the same verse, is used with reference to a divine person, namely god Viṣṇu, and therefore it seems to have the meaning given in the PW, viz. "alles Wissen in sich enthaltend". Hence it is not possible in interpreting M.II,7 to have recourse to the assertion, appealing though it is at first sight, that the form *sarvajñānamaya* can never be predicated of a person. In the given context of an eulogistic description of god Viṣṇu's cosmic, all-embracing great-

[12] In my review of the book mentioned in fn. 8, published in *IIJ* Vol. 24 (1982), p. 142 ff.

ness,[12a] however, this expression is not equivalent to "omniscient". "To know everything" is evidently not the same thing as "to contain all knowledge within oneself", and what apparently is meant by this attribute of Viṣṇu's is that he is the source of each and every type of (human) knowledge, perhaps including liberating insight.

On the other hand, the assumption suggests itself that this usage might be due to a fusion of two different concepts, the theistic idea of a personal god and the mechanistic of a *materia prima*. Yet in the Rāmāyaṇa passage under discussion there is no element that clearly attests to even a partial deviation from the conception of Viṣṇu as divine person.

2.2.That *sarvajñānamaya* should, nevertheless, in 'correct' Sanskrit be predicated of a non-personal subject only is, however, fully corroborated by the manner in which the expression *jñānamaya* is used. For according to the PW it qualifies *tapas* in Muṇḍ.Up.1.1.9 (where *sarvajña* and *sarvavid* stand in the same verse, but, significantly they are predicated of a personal subject); *nidhi* in Mbh. 12.298.7, viz. in the phrase *ajñānāt paripṛcchāmi* (= Janaka), *tvaṃ* (= Yājñavalkya) *hi jñānamayo nidhiḥ*; *vahni*, the "sacrificial fire", in Raghuvaṃśa 8.2o; and finally Viṣṇu's *mukhāmburuhāsava*, the "juice of his face-lotus", of which the worshippers (*saumya*) have drunk, in Bhāg.P. 2.4.24.

2.3.Inspite of this most welcome confirmation, additional arguments should as far as possible be adduced in order to fully warrant the point at issue, i.e. that *saḥ* in M. II,7 does really refer to *vede*. Now, what this verse obviously aims at is a statement as to the relation in which the Manusmṛti as a whole[13] stands to the Veda. The expression

[12a] These descriptions seem to be influenced by *Bhagavadgītā XI*.

[13] In its present context, at least, this verse cannot but be taken to refer to the *Manusmṛti* as such and not to some particular teaching ascribed to Manu.

sarvaḥ, used here either attributively or, rather, predicatively, is clearly meant to emphasize what in a circumlocutory manner is already stated by the initial *yaḥ kaścit kasyacid dharmo*, viz. that without exception each and every 'norm' prescribed by Manu is contained in the Veda. The verb used in this connection, viz. *abhi-dhā*, however, can hardly have the meaning "to say or state e x p l i c i t l y", since such an assertion could easily be shown to be wrong; besides, the Manusmṛti would then amount to no more than a jejune repetition of explicit statements contained in the Veda, its value consisting in nothing but simply collecting in one work, for the sake of convenience, *dicta* already found in the Vedic texts themselves, only that there they are scattered far and wide.[14] Rather what the author must have had in mind was the well-known idea that the different elements of *dharma* are either explicitly taught in the Veda or are to be deduced from certain *liṅgas* contained in it or must go back to corresponding passages in Vedic texts no longer extant. Consequently, what the author wants to intimate is that the whole of *dharma* as taught in the Manusmṛti is solely based, directly or indirectly, on the Veda, i.e. that it has no other source one might conceive of. Hence it follows that M. II,7 is opposed to M. II,6 where in a descending scale after the "whole of the Veda" (*vedo 'khilaḥ*)[15] "the recollection, i.e. the tradition based on recollection, and the virtuous character[16] of those who know [the Veda]" (*smṛtiśīle ca tadvidām*), "the conduct of (morally) good people" (*ācāraś caiva sādhūnām*) and finally

[14] Cf., however, Medhātithi on M. II,6: ... *ity evaṃ viprakīrṇānāṃ manvādayo 'ṅgopasaṃhāraṃ sukhabodhārthaṃ cakruḥ /.*

[15] Explained by Medhātithi on M. II,6 to mean: *kṛtsnaḥ / na kiṃcit padaṃ varṇo mātrā vā yan na dharmāya /!*

[16] Medhātithi on M. II,6 first quotes an explanation according to which *śīlam* means *rāgadveṣaprahāṇam*, but gives later his own (*vayaṃ tu brūmaḥ*) - problematic - interpretation, viz.: *samādhiḥ śīlam ucyate / tathāhi 'śīla samādhāv' iti dhātuṣu* [viz. Dhātupāṭha I 556] *paṭhyate /.*

ātmanas tuṣṭir (eva ca)[17] are enumerated as each forming "the root of *dharma*" (*dharmamūlam*).

Now, if at all a reason is to be adduced for the quite different assertion of M. II,7 a-c, [17a] what could it be like? Certainly not Manu's omniscience; for, if one would have to be omniscient in order to be able to correctly interpret the *dharma* as indicated or hinted at in Vedic texts, this would hold good for anyone consulting these texts for information on the *itikartavyatā*. Nobody in his right mind could have thought of substantiating this assertion, viz. that the whole of *dharma* taught in the Manusmṛti is based on Vedic *dicta*, by pointing out that Manu was omniscient! And if one takes into account the context, i.e. the extant sequence of M. II,6 preceding II,7, and the palpable contrast in which the latter verse stands to the former, there cannot be the least doubt that what actually calls for a convincing justification is the rather bold contention that the Veda is not merely the foremost of sources of *dharma* as expounded by Manu, but rather the only one. Precisely this, however, is ultimately accomplished by the final clause of M. II,7, provided that *saḥ* is correctly taken to refer to *vede* and not to *manunā*!

As to the relation between M. II,6 and 7, it should, of course, be added that the latter verse does not contradict M. II,6 in every regard; rather M. II,7 is meant to point out a peculiar feature of *dharma* as taught by Manu, viz. that it is exclusively based on the Veda whereas that exposed by other *smṛtikāras* flows from other springs be-

[17] On this term cf. P. Hacker in his article "Dharma im Hinduismus", in: *ZMR* 49 (1965), p. 1oo ff. (= Kleine Schriften, p. 5o3 ff.).- On *ātmārāma* cf. B. Schreiner in: *ZDMG* 2 XIX, Supplement III, Deutscher Orientalistentag. ..., Vorträge, hrsg. von W. Voigt, Wiesbaden, 1977, p. 941 ff.

[17a] Surely if *saḥ* were in fact to refer to Manu, the argument would have to run thus: "What has been taught by the Veda has been expounded by Manu, for Manu is omniscient"!

sides. The Manusmṛti is thus said to have a peculiar excellence, a clear superiority over all the other Smṛti texts;[18] and this claim has in fact been recognized not only by *dharmaśāstrins*, as can easily be ascertained when considering the predominant rôle this text has played in the history of Dharmaśāstra or when looking into the Tantravārttika of Kumārilabhaṭṭa who states:[19] "Man beobachtet, daß ausser den Purāṇen, dem Mānavadharmaśāstra und dem

[18] Cf. also the verses:
vedārthopanibaddhatvāt prādhānyaṃ hi manoḥ smṛtam /
manvarthaviparītā tu yā smṛtiḥ sā na śasyate //
tāvac chāstrāṇi śobhante tarkavyākāraṇāni ca /
dharmārthamokṣopadeṣṭā manur yāvan na dṛśyate // ,
ascribed to Bṛhaspati and quoted among others by Medhātithi and Kullūka on M. I,1. - This view is, however, not shared by all the later Dharmaśāstrins; e.g. Hemādri (op. cit., l.c., see fn. 6) refutes it by stating:
yat tāvat uktaṃ manusmṛteḥ śrutitulyatvena vidheḥ smṛtyantarebhyo balīyastvam iti tat kalpamātram / bṛhaspativacana[*m*]
[Hemādri refers to the first of the verses quoted above]
manvarthaviparītānāṃ budhādismṛtīnām aprāmāṇyam āha /
nanu śiṣṭatraivarṇikasvīkṛtānāṃ kātyāyanādismṛtīnāṃ vedārthapratibaddhatvād ity aprāmāṇyahetvavidyamānatvād ato manuśabdenātra sarve vedārthasmartāraḥ kātyāyanādayo 'bhyupalakṣyante /
athavā 'māna jñāne' iti dhātupāṭhād [viz. IV 67] *vedārthajñānavān munir manur ucyate /.*
One has, of course, to read *buddhādi*° and not *budhādi*° as the reference is not to the spurious Smṛti of Budha (on which cf. P.V.Kane, op. cit., p. 286 f.), but to the Buddhist '*dharma*'; cf. also *Tantravārttika*, ed. by G.Y. Nātū, *ĀSS* 97, Poona 197o, p. 113 f. [on MS 1.3.4.].

[19] I quote the translation given by G. Oberhammer, op. cit. (see above, fn. 8), p. 42. The original runs as follows (*Tantravārttika*... ed. by Mm. Pt. Gaṅgādhara Śāstrī, *BSS*, Nos. 5 ff; Benares, 19o3, p. 179. 17 - 22 = *TV* (Pt. 2), ed. by Gaṇapatarāv Yādavarāv Nātū, *ĀSS* 97, Poona, 197o p. 172. 7 - 11 [on MS 1.3.15]):

Itihāsa, die von Gautama, Vasiṣṭha usw. verfassten Dharmaśāstras und Gṛhya-Werke jeweils nur in bestimmten vedischen Schulen studiert werden, so, wie dies für die Prātiśākhyas typisch ist. So wird das Dharmaśāstra des Gautama und Gobhila nur von den Chandogas angenommen, das des Vasiṣṭha von vielen Ṛgvedins, das von Śaṅkha und Likhita von den Vājasaneyins und das von Āpastamba und Baudhāyana von den Taittirīyas."

3. Turning now to the explanation of M. II,7 as offered by the commentators, it is primarily two aspects on which interest should be focused, viz. on the motive for attributing omniscience to Manu and on the opinions as regards the main purport of this verse in its given context. Since there would be little sense in quoting all of them (so far as their works have been preserved or edited), I shall discuss only two of them, viz. Medhātithi and Kullūka, for they represent the two divergent interpretations noted by me at the outset.

3.1. Medhātithi says:[20] *yad uktaṃ vedavitsambandhena smṛteḥ prāmāṇyaṃ tad anena prakaṭayati/* yaḥ kaścid dharmo[21] *varṇa-*

19 (cont.)
purāṇamānavetihāsavyatiriktagautamavasiṣṭhaśaṅkhalikhitahārītāpastambabaudhāyanādipraṇītadharmaśāstrāṇām gṛhyagranthānāṃ ca prātiśākhyalakṣaṇavat praticaraṇaṃ pāṭhavyavasthopalabhyate /
tadyathā gautamīyagobhilīye chandogair eva <ca> parigṛhīte /
vāsiṣṭhaṃ bahvṛcair eva śaṅkhalikhitoktaṃ ca vājasaneyibhiḥ /
āpastambīyabaudhayanīye taittirīyair eva pratipanne....
[cf. also P.V. Kane, op. cit. (fn. 3), p. 2o and in: ***JBBRAS*** (N.S.), (1925), p. 96]. - Oberhammer's rendering of *bahvṛcaiḥ* has to be emended to just "Ṛgvedins".

20 I quote from: ***Manu-Smriti*** with Nine Commentaries...; Vol. 1, ***Bhāratīya Vidyā S.***, No. 29, ed. by J.H. Dave, Bombay, 1972, p. 177.

21 As to the different aspects of the concept of *dharma* in Hinduism, analyzed by P.Hacker (in his article mentioned in fn. 17), it should be noted that already Medhātithi has clearly distinguished

dharma āśramadharmaḥ saṃskāradharmaḥ sāmānyarūpo viśeṣarūpaś ca kasyacid *brāhmaṇāder varṇasya /* manunā parikīrtitaḥ / sa sarvo 'pi vede 'bhihitaḥ *pratipāditaḥ / yathā caitat tathā pūrvaśloka uktam /* sarvajñānamayo hi saḥ / *sarveṣāṃ jñānānām adṛṣṭaviṣayāṇāṃ hetur nimittaṃ vedaḥ / sarvair jñānair nirmita iveti jñāne tadvikāratvam adhyāropya mayaṭ kṛtaḥ / yo hi yadvikāraḥ sa tanmayas tatsvabhāva ity ucyate / vedaś ca jñānahetutvāt tanmaya iti / satkāryadarśane kāraṇaṃ kāryasvabhāvam iti / athavā sarvajñānād dhetor āgataḥ 'hetumanuṣyebhyaḥ'* (Pāṇ. 4.3.81) *iti mayaṭ kriyate //.*

"By this [verse the author, i.e. Manu] makes clear what has been said [in the preceding verse, viz.] that tradition based on recollection is authoritative [as regards *dharma*] due to [its] relation to [persons] who know the Veda. 'Whatever *dharma*', [i.e.] *dharma* relating to the *varṇas*, *dharma* relating to the stages of life, *dharma* relating to the *saṃskāras*, general (i.e. valid for all) and special, 'has been fully described by Manu', 'whichever [the person], i.e. whichever the *varṇa* [involved], beginning with [that of] the Brahmins; 'all this' without exception (*api*) 'is stated, [i.e.]

21 (cont.)
between "*dharma* im Vollzug" and "*dharma* nach dem Vollzug"; for in his commentary on M. II,6 he remarks (p. 172):
uktam asmābhir dharmaśabdo 'yaṃ smṛtikāraiḥ kadācid vidhiniṣedhaviṣayabhūtāyāṃ kriyāyāṃ prayujyate, kadācid tadanuṣṭhānajanye āphalapradānāvasthāyini kasmiṃścid arthe /;
the reference is to his explanation of M. I,2, where he had stated (p. 9):
dharmaśabdaḥ kartavyākartavyayor vidhipratiṣedhayor adṛṣṭārthayos tadviṣayāyāṃ ca kriyāyāṃ dṛṣṭaprayogaḥ /:
obviously, he also has seen the difference between "*dharma* vor dem Vollzug" and "*dharma* im Vollzug". Therefore, Hacker's statement "diese Unstimmigkeit besteht nur für unsere Denkgewohnheiten" (l.c., p. 1o2/2o5) has to be slightly revised: the Indians themselves were fully aware of important distinctions of the term *dharma*, although they would not, of course, have subscribed to the opinion that these differences amount to an "Unstimmigkeit".

is expounded, 'in the Veda'. As to how this [is done], that has been taught in the preceding verse."

Medhātithi's explanation of the final *pāda* of M. II,7 is rather difficult. Obviously G.Jhā [22] was not able to clear the hurdle. One has to realize that Medhātithi, as regards the first of the two interpretations he gives, tacitly refers to Pāṇ. 4.3.143 and 4.2.134.[23] Because of his introductory remark (*sarveṣāṃ jñānānām adṛṣṭaviṣayāṇāṃ hetur nimittaṃ vedaḥ*), resumed later by *jñānahetutvāt*, and in view of the fact that in referring to the *satkāryavīda* it is the cause (*kāraṇa*) he makes the subject of the phrase, one arrives at the conclusion that what he wants to say is this: "'For he is *sarvajñānamaya*': the Veda is the cause (*hetu*), the source (*nimitta*) of all knowledge the object of which is not seen / not visible. [The affix] *maya(ṭ)* has been added [to *sarvajñāna-* in accordance with Pāṇ. 4.3. 143 and 4.3.134] by superimposing on knowledge the character of having it (i.e. the Veda) as [its] product-of-change; [that is to say, the affix is added] in the sense of '[the Veda] is, only as it were, produced by all knowledge'; for what is the product-of-change of something is said to be 'that-*maya*', [i.e.] to have its nature (i.e. the same nature as that). And the Veda because of being the cause of knowledge has the nature of it (i.e. knowledge). This [is what is meant by the expression *sarvajñānamaya*] (*iti*). For (*iti*), according to the [Sāṃkhya] view that the product exists [already] in its cause [and only becomes manifest], the cause has the nature of [its] product."

[22] Manu = Smṛti. *The Laws of Manu with the Bhāṣya of Medhātithi*, Vol. 1, Pt. 1, Calcutta, 192o, p. 2o8.

[23] On this meaning of the secondary affix *maya(ṭ)* cf. also my article "Paralipomena zum *sarvasarvātmakatvavāda*.I. Mahābhāṣya zu Pāṇ. 4.3.155 und seine einheimischen Erklärer", to be published in: *WZKS*, XXVI (1982).

That is to say, the gist of Medhātithi's interpretation is: the Veda is the cause of all knowledge; according to the Sāṃkhya theory of causation every cause contains in itself its product(s) and can, hence, be said to have its/their nature. Applied to 'Veda' and 'all knowledge' this means that the Veda, though in fact being the cause of all knowledge, nevertheless has the *svabhāva* of its product, i.e. all knowledge; therefore the Veda can be said to be made up of knowledge, but it cannot be said to be produced by all knowledge, but to be produced by it o n l y a s i t w e r e . Accordingly, it has to be assumed that the addition of the affix *maya(ṭ)* is caused by an *adhyāropa*, i.e. by superimposing on (all) knowledge the character of being the *prakṛti* of the Veda that in its turn is looked at as though it were its product-of-change. That is to say, according to Medhātithi the affix *maya(ṭ)* as equivalent to *tasya vikāraḥ* is used here but figuratively. Yet he might have felt that this interpretation is not completely satisfactory so that he offers another one, viz.:

"Or [alternatively / rather (?) the affix] *maya(ṭ)* is added in accordance with Pāṇ. 4.3.81 [and 82 in connection with 4.3.74], [i.e. what is meant by *sarvajñānamaya* is that the Veda] has proceeded from all knowledge as its cause".

Of particular importance are the following elements in Medhātithi's explanation: *1.* He specifies *jñāna* as *adṛṣṭa-viṣaya*, thus making clear that the context is that of *dharma* and not of knowledge in general. *2. abhihitaḥ* is paraphrased by *pratipāditaḥ*, an expression that seems to have been consciously chosen as it does not imply any limitation as regards the means by which the *dharma* is "made understood" in the Veda. *3.* The verse is taken to elucidate one of the constituent parts of M. II,6, viz. the authoritativeness of *smṛti* as one of the sources of *dharma* (due to its relation to *vedavids*). It is plain to the Western philologist that by this interpretation, i.e. by obliterating the contrast be-

tween both these verses, Medhātithi is but pursuing the aim, characteristic of commentators, of bringing out in relief the assumed internal consistency of the *mūla* text. *4*. Medhātithi is the only commentator who gives a detailed explanation of the expression *sarvajñānamaya*, i.e. who by implicitly or explicitly referring to the relevant *sūtras* of Pāṇini's accounts for the functions of the secondary affix *maya(ṭ)*. He offers two alternative explanations, that is, he takes into consideration only two functions of this affix out of the four distinguished by Pāṇini. Indeed, Pāṇ. 5.2.47 cannot be applied here as its scope is limited to numerals only. But what about Pāṇ. 5.4.21 (together with 22)? By the indigenous Indian grammarians, this *sūtra* is not taken to assign to *maya(ṭ)* the meaning "made up of" or "consisting in" (as some Western interpreters would have it);[24] instead they assign to it the meaning "prepared in plentiful supply" or "at which there is plentiful supply of something".[25]

[24] E.g. O. Böhtlingk, ***Pāṇini's Grammatik***, Leipzig, 1887, and L. Renou ***La Grammaire de Pāṇini***, Paris, 1966, the last one, however, pointing out that this sūtra is interpreted differently by "les commentaires".

[25] Cf. e.g. the *Kāśikā* and *Siddhāntakaumudī* on Pāṇ. 5.4.21, as well as the ***Bṛhacchabdenduśekhara*** on the latter (ed. by Dr. Śrīsītārāma Śāstrī, ***Sarasvatībhavanagranthamālā*** 87), Varanasi, 196o, p. 1537. where Nāgojībhaṭṭa remarks:
yady api prakṛtam eva prastutam, tathāpi 'yādṛśasya prakṛtasya loke mayaṭā vacanaṃ [=] pratyāyanaṃ tatra' ityarthakavacanagrahaṇasāmarthyalabhyaṃ vyākhyānalabhyaṃ ca vivakṣitam artham āha prācuryeṇ - *eti ... :*
I think the indigenous interpretation has to be preferred, not only because of the Pāṇinīyas' better feeling for words, but also because Pāṇ. 5.4.21 as understood by Böthlingk and Renou would be a mere repetition of Pāṇ. 4.3.143 (together with 4.3.134).

Since **Medhātithi** seems to have considerable knowledge of the **Aṣṭādhyāyī** and probably also of some of its commentaries as also of later grammatical works, it is hardly possible to assume that he simply overlooked this latter *sūtra* of Pāṇini's; he must have consciously ruled out this possibility, and the reason, or at least an important reason,[26] cannot but be the prior member of the compound, i.e. *sarva-*, by which, at least in the given context, total completeness is expressed in such a way that the additional idea of plenitude would simply be nonsensical. Therefore, when one keeps to the obviously more precise and accurate description Pāṇini has given of the function of *maya(ṭ)*, or when one follows Medhātithi's interpretation in this respect (and I do think one should follow it), *sarvajñānamaya* [27] can only mean "product-of-change of all knowledge" or "proceeded from all knowledge as its cause". It is to be admitted that both these meanings ultimately amount to "containing all knowledge [within itself and hence being the source of all knowledge]"; none of them, however, is compatible with a personal subject (at least a personal subject other than God). Thus we gain a further argument in favour of the interpretation of M. II,7 as stating that it is the Veda that is *sarvajñānamaya*.

3.2. **Kullūka**, on the other hand, gives the following explanation:[28] *vedād anyeṣāṃ vedamūlatvena prāmāṇye 'bhihite 'pi manusmṛteḥ sarvotkarṣajñāpanāya viśeṣeṇa vedamūlatām*

[26] Another reason might be that in the given context it is already *a priori* more probable that by the word ending in *-maya* a specific, viz. 'causal' relation is expressed as obtaining between *sarvajñāna* and the subject predicated by it.

[27] Its use in the **Rāmāyaṇa** (see above, p.83) may be either due to an unconscious fusion of the two concepts, or may be taken as another piece of evidence for what we often find elsewhere also in later Sanskrit, viz. 'semantic expansion'.

[28] I quote from the edition mentioned in fn.2o.

āha yaḥ kaścid *iti / yaḥ kaścit kasyacid brāhmaṇāder* manunā dharma *uktaḥ* sa sarvo vede *pratipāditaḥ / yasmāt sarvajño 'sau manuḥ / sarvajñatayā cotsannaviprakīrṇapaṭhyamānavedārthaṃ samyag jñātvā lokahitāyopanibaddhavān / govindarājas tu* sarvajñānamaya *ity asya sarvajñānārabdha iva veda iti vedaviśeṣaṇatām āha //*

"Although [in/on the preceding verse] it has been said that [the sources of *dharma*] other than the Veda are authoritatively valid because of having the Veda as [their] root, he (i.e. Manu) states in this verse that [his] Manusmṛti is based to a higher degree on the Veda in order to impart [what otherwise couldn't easily be realized, viz. that his Manusmṛti] surpasses all [the other Smṛti works]. 'Whatever *dharma* [as valid] for certain' [people, i.e.] the Brahmins, etc., has been taught 'by Manu, all that' has been expounded 'in the Veda', for he [i.e.] Manu, is omniscient; and by being omniscient he has come to know correctly the content [not only] of the Veda which is [still] recited [nowadays, but also] of that [Veda] of which [the oral tradition] has ceased or which is scattered far and wide, and then he has expounded it [in his work] for the benefit of men. Govindarāja, however, has taken *sarvajñānamaya* to qualify *veda*, [that is to say, he has taken the final clause] to mean '[for]the Veda is, as it were, produced from all knowledge'."

In contradistinction to Medhātithi, Kullūka works out the peculiar relation in which this verse stands to the preceding one: for he observes, most acutely, that M. II,7 is meant to point out that Manu's work is superior to all other Smṛtis and this is something we cannot but accept. Yet at the same time it has to be noted that this his opinion is not connected with the interpretation he himself offers for the predicate *sarvajñānamaya*. This is indicated by the fact that he does not hesitate to quote Govindarāja's divergent view which he seems to regard as at least likewise possible; obviously, Kullūka did not fear that the view of the older commentator could ultimately affect

what he himself had said about the central purport of M. II,7, although Govindarāja's interpretation of this verse differs considerably from his own.[28a]

Further, Kullūka in his paraphrase simply replaces the crucial expression *sarvajñānamaya* by *sarvajña* without the least attempt at accounting for this semantic equation. Yet, it has to be admitted that he obviously has reflected to some extent on the reason underlying the view that Manu is omniscient. The explanation he gives is, however, not at all convincing: even if a particular element of *dharma* taught by Manu could be said to be based on an (injunctive) passage in a Vedic text no longer extant (*utsanna*), the question would still arise why one should not assume that this text was still recited when Manu composed this his Smṛti. If, however, by *utsanna*° are meant Vedic texts that were no longer handed down even in the times of Manu himself, one would have to draw attention to the fact that commentators of other Smṛti texts do not scruple to infer the former existence of relevant Vedic texts without assigning omniscience to the assumed authors of these Smṛti texts. And why should it be only Manu who has to be omniscient in order to be able to understand the *artha* of the Veda, still recited in his times (*paṭhyamāna*)?[29]

Therefore, one cannot help arriving at the conclusion that what Kullūka suggests is not the true motive for Manu's omniscience, i.e. that the origin of this idea must

[28a] After having stated that M. II,7 is meant to show that the other sources of ***dharma***, enumerated in the preceding verse, are in their turn based on the Veda, Govindarāja explains the *pādas* a - c accordingly and finally says :
yasmāt sarva-[read sarvā-] ***dṛṣṭārthajñānahetutvāt*** sarvajñānamayaḥ ***sarvajñānārabhha iva vedaḥ*** / ...

[29] In this respect Hemādri's argument (see above, fn.18) that in that case all the ***smṛtikāras*** would have to be taken to be omniscient sounds plausible.

lie elsewhere. It is even possible to venture the opinion that the real motive must either be of such a kind that it could not be utilized in interpreting M. II,7 or was simply no longer known to Kullūka.

4. While studying some of the numerous textcritical and exegetical problems the Vaiśeṣikasūtra poses, I recently chanced upon a passage in one of the commentaries that might render substantial assistance in discovering the true motive. What I am referring to is the explanation found in the anonymous Vyākhyā [30] on VS 2.1.19 *pratyakṣapūrvakatvāt saṃjñākarmaṇaḥ*. This *sūtra* forms one sentence together with the preceding one (2.1.18: *saṃjñākarma tv asmadviśiṣṭānāṃ liṅgam*), i.e. a single argument, meant to refute the objection of a (fictitious) opponent who calls in question the possibility of proving, by means of inference, the existence of the 'substance' wind. That the interpretation offered by the author of the Vyākhyā can ultimately be shown to be historically wrong [31] does not matter in the present context. What he says is:[32] *asyeyaṃ saṃjñeśvarasyābhipreteti jñāñaṃ saṃjnākarma / tac ca nāsmadādīnāṃ yogajadharmanirapekṣendriyavedyatvāsambhavāt / nāpi liṅgajanyam / sṛṣṭyādau manvādibhiḥ parameśvarābhiprāyavyāptaliṅgānavagamāt / tasmān mahādevaprasādāsāditayogajadharmasadhrīcīnamanasā vāyvādayo vāyvādipadair boddhavyā itīśvarābhimatam iti manvādibhir niścīyata iti manvādīnāṃ sarvajñatvasiddhiḥ / ata evāsmadviśiṣṭānām iti bahuvacanam //*

[30] Ed. by Anantalal Thakur, ***Mithilāvidyāpīṭhagranthamālā, Prācīnācāryagranthāvalī***,No. 5, Darbhanga, 1957.

[31] I hope to show this in a monograph entitled "Textkritische und exegetische Untersuchungen zum Vaiśeṣikasūtra I. Der sechste Adhyāya" which I am presently working on.

[32] P. 22. 1-5 of the edition referred to in fn. 3o.

"*saṃjñākarma* [is a *bahuvrīhi* compound, i.e. is equivalent to *saṃjñā karma* [=] *viṣayo 'sya*,[33] that is to say, what is meant by it is] the knowledge that it is the intention of God that this (i.e. x) be the conventional designation of that (i.e. the object y); and it is not people like us (i.e. common human beings) who [can] have this [knowledge], since it cannot be obtained by the senses without the help of a [particular] *dharma* born of Yoga. Nor can it [have] be[en] obtained with the help of a characteristic mark (i.e. by inference); for, at the beginning of creation Manu and the others could not perceive [any] characteristic mark pervaded by the intention of Parameśvara (i.e. a logical reason from which God's intention could have been inferred by them). Therefore, [the fact] that it is the wish of God that [really existing objects] like wind, etc., are to be understood by the words 'wind', etc., [has been] truly cognized by Manu and the others, [namely] by [their] internal organ favoured by a [particular] *dharma* born of a Yoga that had been achieved by the grace of Mahādeva. Hence it is correctly established that Manu and the others [were] omniscient. [And] for this very reason the plural 'of people superior to us' [is used in sūtra 2.1.18]." [33a]

The objection raised by the opponent is thus refuted by resorting to a peculiar theory of the origination of language. The argument adduced here is tantamount to the statement that the 'substance' wind, although itself not perceivable, does exist because the name 'wind' has been created by God. This language-creating activity of God, however, is confined to the realm of volition. That is to

[33] According to the author's explanation of this term given on VS 2.1.18 (p. 21.6).

[33a] This specific justification of the plural of *asmadviśiṣṭānāṃ* in *VS* 2.1.18 is directed against an interpretation according to which it is an honorific plural referring to Īśvara.
Cf. the monograph mentioned in fn. 31.

say, according to this theory, God does not himself teach language to the first men (i.e. by indicating the objects and uttering their designations); rather, his intention has to be cognized, and this cannot be accomplished by 'mere mortals', for God's intention can neither be perceived nor inferred; only persons who are endowed with a peculiar, higher faculty of cognition can have insight into it, and it is they who, in their turn, teach all others how to speak.

These persons - the primeval *vṛddhas* whose *vyavahāra* others observe in order to learn how to speak - are identified as "Manu and the others". It is hardly conceivable that it is Manu, the *smṛtikāra*, who is primarily, if at all, referred to here. In the given context, in connection with the idea of a series of creations, dissolutions (and recreations) of the universe, it should rather be the 'mythological' Manu, or Manus, whom the author has in mind. Indeed, it is more than likely that the author of the Vyākhyā depends here on Vaiśeṣika ideas about creation belonging to an earlier period [34] and traceable back to Praśastapāda, who, for all that is known, seems to have been the first representative of this system to introduce not only the Īśvara doctrine, but also to conceive of the latter's rôle as first of all connected with the creation and dissolution of the universe.[35]

In the process of creation, Maheśvara, according to Praśastapāda,[36] creates "by a mere act of will (*abhidhyānamātrāt*), out of the atoms of fire and earth, a big egg in which he creates...god Brahmā. It is this Brahmā who is

[34] According to A.Thakur, the author of the Vyākhyā himself "seems to belong to about the twelfth or thirteenth century".

[35] Cf. G.Chemparathy's article "The Īśvara Doctrine of Praśastapāda", in: *VIJ* VI (1968), pp. 65-87.

[36] Cf. *Praśastapādabhāṣya* (*Padārthadharmasaṃgraha*) with Commentary of Śrīdharabhaṭṭa, Varanasī, 1963, p. 129 ff.

then entrusted with the creation of the living beings",[37] i.e. who, in his turn, creates "the Prajāpatis, the *mānasān manudevarṣipitṛgaṇān* and finally the four *varṇas* and all the other living beings".[38] The compound *manudevarṣipitṛ-gaṇān* is explained by Śrīdhara as follows:[39] *manūn, devān, ṛṣīn, pitṛgaṇān,* and the attribute *mānasān* is taken by him to mean *manaḥsaṃkalpaprabhavān,* "whose origin lies in an act of will [of god Brahmā]." Of immediate relevance to the present argument, however, is what Śrīdhara says in a passage following immediately upon his explanation of the wording of the *mūla*. This passage runs as follows:[40]

kalpādāv utpannānāṃ prāṇināṃ sarvaśabdārtheṣv avyutpannānāṃ saṃketasyāśakyakaraṇatvāc chābdavyavahārānupapattir iti codanāyāṃ pratyavasthānabījam idam **mānasān** *iti / yonijaśarīro hi mahatā garbhāvāsādiduḥkhaprabandhena viluptasaṃskāro janmāntarānubhūtasya sarvasya na smarati / ṛṣayaḥ prajāpatayo manavas tu* **mānasā** *ayonijaśarīra-viśiṣṭādṛṣṭasambandhino dṛṣṭasaṃskārāḥ kalpāntarānubhūtaṃ sarvam eva śabdārthavyavahāraṃ suptapratibuddhavat pratisan-dadhate pratisandadhānāś ca parasparaṃ bahavo vyavaharanti / teṣāṃ vyavahārāt tatkālavartināṃ prāṇināṃ vyutpattiḥ, tadvyava-hārāc cānyeṣām ity upapadyate vyavahāraparamparayā śabdārtha-vyutpattir ity arthaḥ /*

"Since the living beings that have come into existence at the beginning of a *kalpa* are completely ignorant of

[37] Quoted from Chemparathy's article (see fn.35), p. 8.

[38] The original runs as follows (p. 13o.2-131.3):
sa ca maheśvareṇa viniyukto brahmātiśayajñānavairāgyaiśvaryasaṃpannaḥ prāṇināṃ karmavipākaṃ viditvā karmānurūpajñānabhogāyuṣaḥ sutān prajāpatīn mānasān manudevarṣipitṛgaṇān mukhabāhūrupādataś caturo varṇān anyāni coccāvacāni bhūtāni ca sṛṣṭvāśayānurūpair dharmajñāna-vairāgyaiśvaryaiḥ saṃyojayati... /.

[39] P. 131.13 f. of the edition used (cf. fn. 36).

[40] P. 133.3-1o.

all that pertains to word and meaning [and, hence, of all words themselves] they are not able to create linguistic convention. Therefore, [under such conditions] communication-by-language cannot be adequately accounted for. The [expression] *mānasān* [in the passage of the Padārthadharmasaṃgraha under discussion] forms the germ of the counterargument directed against this objection (i.e. contains this counterargument in its essence). For,[41] the man, who possesses a body from the womb, does not remember anything of former births, for the impressions (*saṃskāras*) have disappeared owing to the miseries undergone during the stay in the womb, etc.; Ṛṣis, Prajāpatis and Manus, however, possessing unseen (qualities of the soul) which are distinguished by bodies, not born from the womb, clearly perceive the *saṃskāras*, and remember the complete use of word and meaning, just like a man who awakens from sleep; then they, many as they are, having this remembrance, make use [of the words and meanings] when among each other; through their use [of language] the creatures who are contemporaneous with them, get proficient in it; and from their use [of language] others again; thus the proficience in word and meaning originates by tradition of use...".

It is true that this theory is partially different from that referred to by the author of the Vyākhyā in that the intention of God and its cognition by "Manu and the others"

41 In the following, I quote the translation given by B.Faddegon, *The Vaiśeṣika System*, repr. Wiesbaden, 1969 , p. 376, although it is not faithful to the original in every regard; e.g. *mahatā* is left out; *suptapratibuddhavat* should rather be rendered by "like [a man] who has [first] fallen asleep and [later] awakened [from sleep]"; and *pratisandadhānāś ca parasparaṃ bahavo vyavaharanti* means rather "then they, having this remembrance, converse much with each other" (that there are many sages need not be stated anymore; instead, what has to be stressed is that in conversing they cover the whole range of language; that is to say, *bahavo* corresponds to an adverb in English; cf. J.S.Speijer, *Sanskrit Syntax*, repr. Kyoto, 1968, p. 186 (§ 243)).

is not mentioned here. However, one cannot fail to realize that the theory expounded by Śrīdhara is incomplete insofar as it does not account for the very first creation of language.

Now, a fragment preserved in the Tattvasaṃgrahapañjikā of Kamalaśīla,[42] ascribed to Praśastamati (=Praśastapāda)[43] and analyzed by G.Chemparathy [44] clearly shows that Praśastapāda not only attributed the very first creation of language to God, but used this also as one of the proofs for God's existence. Unfortunately, this fragment does not contain any explicit statement on the exact relations between God's creation of language and the "usage of words fixed for each object (such as) for cow, etc.". All that can be deduced with certainty is that according to Praśastapāda communication-by-language as initiated at the beginning of creation presupposes instruction by God; in which way this instruction is accomplished, i.e. whether directly or indirectly, is not stated. In view of Praśastapāda's ideas about the creation (and dissolution) of the universe the assumption seems to be warranted that it was already he who brought in Manu, or the Manus, and other sages as a sort of "go-betweens".

In any case, there cannot be the least doubt that in Vaiśeṣika circles a doctrine existed according to which Manu, or the Manus, and other sages were the first persons who by virtue of an extraordinary cognitive faculty,

[42] Quoted by Chemparathy in his article (see fn. 35), p. 4.- On the general trustworthiness of Kamalaśīla cf. E.Steinkellner, "Zur Zitierweise Kamalaśīlas", in: *WZKSO* VII (1963), p. 116-50.

[43] That Praśastamati is identical with Praśastapāda is not, as B.K. Matilal (*Nyāya-Vaiśeṣika* [*A History of Indian Literature* ... VI,2], Wiesbaden, 1977, p. 62) says, "a highly debatable point", but well established by A. Thakur, G. Chemparathy and Muni Jambūvijaya.

[44] Cf. his article (fn. 35), p. 4 ff.

i.e. a kind of *yogipratyakṣa*, peculiar to them learnt language which prior to them existed only in the form of God's intention, and thus started the *paramparā* of communication-by-language. And it is this doctrine that adequately explains the origin of the conception of Manu's and the other sages' omniscience and renders it fully intelligible. For, to know God's intention as regards words implies the knowledge of all the *designata*, too, i.e. of everything that has the character of being (*bhāvarūpa*).

Accordingly, what is meant by attributing omniscience to "Manu and the other [sages]" is that they know "the totality of reality *secundum extensionem*". This, however, is precisely the meaning intended by the word *sarvajña(tva)* as applied to God by some early Vaiśeṣikas;[45] and in this regard, Manu and the other sages, on the one hand, and God, on the other are remarkably similar.[46] What has been rightly observed by Chemparathy [47] in analyzing Praśastapāda's ideas about creation, viz. that "all those qualities" (*dharma, jñāna, vairāgya* and *aiśvarya*) "which are ascribed to the Supreme God... by Pakṣilasvāmin" are ascribed by Praśastapāda to Brahmā, who is charged by Īśvara with the creation of the beings, i.e. that Īśvara and Brahmā have qualities in common, holds good for "Manu, etc.", and Īśvara also. Yet, the similarity obtaining between God and "Manu, etc.", seems not to be confined to their omniscience only; for, when Kullūka states that Manu, the *smṛtikāra*, "has expounded it (i.e. the °*vedārtha*) [in his work] f o r

[45] Cf. G. Chemparathy, "Two little-known Fragments from early Vaiśeṣika Literature on the Omniscience of Īśvara", in: *ALB* 33 1969, p. 117-134. - On the likewise narrower sense of the Buddhist concept of omniscience cf. now G. Bühnemann, ***Der allwissende Buddha. Ein Beweis und seine Probleme. Ratnakīrti's Sarvajñasiddhi,*** (***Wiener Studien zur Tibetologie und Buddhismuskunde,*** Hft. 4), Wien, 198o.

[46] An important difference, however, is that eternity is attributed to God and denied of "Manu, etc."

[47] Cf. his article (fn. 35), p. 8 ff.

the benefit of men (*lokahitāya*)", this cannot but imply that Manu has a peculiar regard for all (human) beings; one is, therefore, reminded of Pakṣilasvāmin's conception of God as *āptakalpa*, i.e. as "one who has gained all his wishes" and who, accordingly, does not act for his own sake, but for that of others only, i.e. "who has regard for all beings like a father for his offspring" (*yathā pitāpatyānāṃ tathā pitṛbhūta Īśvaro bhūtānām*);[48] there is every appearance that the conception of Manu corresponds in this respect also to that of Īśvara. According to the author of the Vyākhyā it is by the 'grace' (*prasāda*) of God that "Manu and the others" obtain *yoga*, and this word might well be used here in the sense of *samādhi*. Now, this latter is again one of the qualities attributed to Īśvara by Pakṣilasvāmin [49] so that his similarity to Manu and the other sages becomes still more striking.

Chemparathy [50] has likewise already drawn attention to the fact that Praśastapāda apparently "took up the already existing mythological conceptions of the dissolution and creation of the universe in order to give them a philosophical basis and to systematise them". Yet, "his attempt to reconcile the existing mythological conceptions with philosophical thought" is not only indicated by his making not Īśvara, but Brahmā the direct creator of all beings,[51] but also by his keeping to the mytheme of Prajāpatis, Manus, etc.; for, obviously, in this case also he has in a peculiar

[48] Quoted from the *Nyāyabhāṣya* on NS 4.1.21, *Nyāyasūtra of Gautama. A System of Indian Logic*, ed. by G.Jha (No. 58, *POS*), p. 253.1.

[49] Cf. *Nyāyabhāṣya* l.c., p. 252.2.

[50] Quoted from his article (fn. 35), p. 9.

[51] According to *Mbh.* III 185.49 f., however, it is Manu who is entrusted by Prajāpati-Brahmā with the creation of all "offspring" (*prajā*), including Gods, demons and men. The problems connected with these divergent mythological conceptions cannot be discussed here.

manner made use of conceptions attested to in mythological texts, in that he assigns to these beings a special function which seemed important to him for philosophical reasons, viz. that of truly cognizing God's intention as regards language and thus establishing the *parampara* of human speech. Therefore, it is legitimate to assume that by the expression *manvādi* the author of the Vyākhyā, too, refers, at least among others, to the Purāṇic "fourteen Manus", likewise known to Kumārilabhaṭṭa.[52]

Now, one of these, viz. Manu Svāyambhuva, is traditionally, e.g. according to the first Adhyāya of the Manusmṛti itself, taken to be the author of the famous 'lawbook'. Hence, it is not surprising at all that the quality of being omniscient, originally ascribed to the 'mythological' demiurge Manu, has in the course of time been transferred to the assumed author of the Manusmṛti. And, to be sure, it is this latter development that lead to the introduction of Manu's omniscience into M. II,7.

As was pointed out at the outset, this does indeed distort the original intention of the verse.[53] Yet the foregoing remarks, sketchy though they are, do reveal how ideas which historically are essentially distinct and of

[52] Cf. *Tantravārttika* on MS 1.3.7, p. 2o2 and 122 of the two editions (referred to in fn. 18), respectively.

[53] In this connection it should be added that the historically correct interpretation of M. II,7 is met with also outside the range of Dharmaśāstra literature. E.g.,Prabhācandrācārya (98o-1o65) in his *Nyāyakumudacandra*, a commentary on Akalaṅkadeva's I. *Laghīyastraya* (ed. by Pt. Mahendra Kumar Nyaya Shastri (*MDJG* 38/39), Bombay , 1938/41, p. 88), while summarizing - in a *pūrvapakṣa* section - the Mīmāṃsā view that there are no omniscient beings, distinguishes between two kinds of *upadeśa*, viz. a *vyāmohapūrvako yathā svapnopalabdhārthopadeśaḥ*, and a *samyagjñānapūrvakaḥ*, exemplified by him in the following manner:

yathā manvādīnāṃ sakalārthajñānodayavedamūlo dharmādyaśeṣārthopadeśaḥ / te hi nikhilapadārthajñānotpattihetor vedād āvirbhūta viśuddhabodhā dharmādyaśeṣapadārthasārtham upadiśanti .... /.

distinct origin have influenced each other; and how Indian interpreters have attempted to overcome the contradictions by bringing them to a common denominator, in spite of the fact that they clearly realized certain exegetical difficulties.

53 (cont.)
This passage, which almost looks like a commentary on M. II,7, clearly shows that in the 11th century (and perhaps significantly enough among Jains) Manu (and the other *smṛtikāras*) - inspite of the fact that they are said to deal comprehensively with all the topics of *dharma* - were not (yet) regarded as omniscient, and that in accordance with the original intention of M. II,7 it was the Veda that was considered as "the source of knowledge of all things".

DEVASVĀMIN: A FORGOTTEN JURIST?

Parameswara K. Aithal

Those who are acquainted with the history of *dharmaśāstra* literature are aware of the fact that titles of numerous works and not a few names of authors on *dharmaśāstra* are known to us only through quotations and references in later works. This is true not only of early authors such as Ṛsyaśṛṅga, Cyavana, Jātūkarṇya, Paiṭhīnasi, and many others, but also of later commentators and *nibandhakāras*, such as Bhartṛyajña, Śrīkara, Kāmadhenu, Jitendriya and so on. The name of Devasvāmin as a ritualistic author, however, is well known through his *bhāsya* on the *Āśvalāyanaśrautasūtra*,[1] the *Āśvalāyanagṛhyasūtra*[2] and his unique commentary on the *Saṃkarṣakāṇḍa*[3] of the *Pūrvamīmāṃsāsūtra*. But his

[1] Being published in the Vishveshvaranand Vishva Bandhu Institute, Hoshiarpur; cf. *Vishveshvaranand Indological Journal*, vol. 17, 1979, p. 372.

[2] Published by the Adyar Library and Research Centre, Madras, northern version 1944 (Chapter 1 only); southern version complete, 1980.

[3] Edited by S. Subrahmanya Sastri: *Saṅkarṣa kāṇḍa of Jaimini*, with the Bhāsya of Devasvāmin, University of Madras, 1965 (=*Annals of Oriental Research*, vols. 19-20, 1964-65).

works on *dharmaśāstra* appear to have been lost altogether. In his *History of Dharmaśāstra* P.V. Kane observed:[4]

> "The Smṛticandrikā tells us that Devasvāmin composed like Śrīkara and Śambhu a work in the nature of a digest of *smṛtis (smṛtisamuccaya)*[5]... The commentary of Nārāyaṇa of the Naidhruva-gotra, son of Divākara, on the Āśvalāyanagṛhyasūtra[6] says that it relies upon the *bhāṣya* of Devasvāmin on the same work. Gārgya Nārāyaṇa, son of Narasiṃha, in his commentary on the Āśvalāyana-śrautasūtra, tells us that he follows the *bhāṣya* of Devasvāmin thereon. It is hardly likely that two writers of the same name flourished about the same time. Hence it may be assumed that Devasvāmin wrote *bhāṣyas* on the Āśvalāyana Śrauta and Gṛhya sūtras and a digest of smṛtis, where he discussed all topics of dharma, such as ācāra, vyavahāra, āśauca, etc."

Through the innumerable quotations from and references to Devasvāmin in the later works on *dharmaśāstra* it becomes evident that he was regarded as an authoritative jurist, a legal writer, whose original work is lost and who is consequently forgotten. Although the importance of his contribution to the system of *dharmaśāstra* cannot be assessed thoroughly and satisfactorily, it can at least be illustrated by means of collecting, as far as possible, quotations and references reflecting his viewpoints on particular topics of *dharmaśāstra*.

[4] *History of Dharmaśāstra*, vol. I, part II (revised edition), Poona, 1975, p. 591.

[5] *ye punaḥ smṛtisamuccayakārāḥ śambhu-śrīkara-devasvāmyādayaḥ... smṛtivākyāni vicārayitum granthavistāram cakrire. (Smṛticandrikā,* Vy. p. 621).

[6] *āśvalāyanagṛhyasya bhāṣyam bhagavatā kṛtam, devasvāmi-samākhyena vistīrṇam tatprasādataḥ.*

On the probable date of Devasvāmin there has been plenty of discussion among the modern scholars[7] of *dharmaśāstra* and ritualistic literature. As this difficult problem has already been dealt with at length by the present author elsewhere,[8] it would suffice to add that the discussion on the approximate date of Devasvāmin remains inconclusive as some of the points discussed may be interpreted differently. P.V. Kane[9] has not-

[7] To mention only a few of them: Bhāu Dāji, "Notes on the Age and Works of Hemādri", *Journal of the Bombay Branch of Royal Asiatic Society 9*, 1869, p. 161. R.G. Bhandarkar, *Report on the Search for Skt. MSS. of the years 1883-84*, in the *Collected Works...* vol. II, Poona, 1928, pp. 1O8-1O. Alfred Hillebrandt, *Ritual-Literatur - Vedische Opfer und Zauber*, Strassburg, 1897, pp. 26-7. P.V. Kane, op.cit., pp. 591-3. C.G. Kashikar, *A Survey of the Śrautasūtras*, Bombay, 1968, p. 82. ("Since the title 'svāmin' denotes a semi-mythical person, the period of Devasvāmin may not be later than 4OO-5OO A.D. according to Hillebrandt. MM.P.V. Kane holds that he might have flourished about 1OOO-1O5O A.D."). K.P. Jog (see note 13 below), pp. xxiiff.

[8] In the introduction to the edition of the *Bhāsya* of Devasvāmin on the *Āśvalāyanagṛhyasūtra*, Adyar, 1980, pp. xxiiff. (see note 2 above). It may be noted here that the name Devasvāmin is not altogether unfamiliar, e.g.:

asti vārāṇasī nāma purī haranivāsabhūḥ /
devasvāmīti tatrāsīn mānyo narapater dvijaḥ //
(Kathāsaritsāgara, Nirnaya Sagar Press, Bombay, 1903, 87.3).

sampadām sadanam svargam jayaty ujjayinī purī /
punyasenābhidhānasya tasyām āsīn mahīpateḥ //
brāhmaṇaḥ sevako dhīmān harisvāmīti viśrutaḥ /
devasvāmī sutas tasya babhūva śrutipāragaḥ //
(Bṛhatkathāmañjarī by Ksemendra, Nirnaya Sagar Press, 2nd edn., Bombay, 1931, p. 137).

[9] Op.cit., p. 593; cf. Umesha Mishra, Appendix to *Pūrvamīmāmsā in Its Sources*, Benaras Hindu University, 1943: "We do not know more about Devasvāmin. That he wrote a commentary on the *Śābarabhāsya* is known

ed that in the *Prapañcahṛdaya* it is stated that Devasvāmin composed a brief gloss on the twelve *adhyāyas* of the *Pūrvamīmāṃsāsūtra* and the four *adhyāyas* of the *Saṃkarṣakāṇḍa* seeing that the *bhāṣyas* of Bodhayana and Upavarṣa were vast. P. Bhagavaddatta[10] presumes that Śabarasvāmin's *bhāṣya* was based on this gloss of Devasvāmin. In his preface to the edition of the *Saṃkarṣakāṇḍa* S. Subrahmanya Sastri observed: "According to *Prapañcahṛdaya* (11th century) however he [Devasvāmin] precedes Bhavasvāmin who is quoted by Śabara."[11] In that case Devasvāmin must be earlier than Śabarasvāmin. Moreover in the *bhāṣya* of Devasvāmin on the *Saṃkarṣakāṇḍa* there is no reference to Śabarasvāmin nor any indication to his *bhāṣya*. As has been already pointed out,[12] Jayantasvāmin in his *Vimalodayamālā* has quoted a passage from the *Āśvalāyanagṛhyasūtrabhāṣya* of Devasvāmin (referring to him as *Bhāṣyakāra*). According to K.P. Jog, [13] Jayantasvāmin belonged most probably to the seventh century or the beginning of the eighth century. This would show that Devasvāmin is earlier than Jayantasvāmin. In this case it would be difficult to explain the mentioning of Medhātithi in the *bhāṣya* of Devasvāmin on the *Āśvalāyanagṛhyasūtra*. It should be noted however, that the reference to Medhātithi could not be traced in his *bhāṣya* on the *Manusmṛti*.

9 (cont.)
to us from the *Prapañcahṛdaya*. He is also believed to have written on the *Saṃkarṣakāṇḍa*. As the *Prapañcahṛdaya* is believed to be a work of the 11th century it may be easily said that Devasvāmin must have lived before the eleventh century."

10 *History of Vedic Literature*, 2nd vol.: The Commentators of the Vedas (in Hindi), Pranava Prakashana, New Delhi, 1976, pp. 82-3.

11 See above note 3; preface p. ix.

12 Introduction to the edition of the Bhāṣya of Devasvāmin (see note 2 above), p. xxix.

13 Introduction to the *Vimalodayamālā* of Jayantasvāmin, University of Poona, 1974, p. xxiii.

Following is the list of quotations from and references to Devasvāmin in some of the selected texts like the *Smṛti-candrikā* of Devanabhatta, probably the earliest author who profusely quotes from Devasvāmin, *Caturvargacintāmani* of Hemādri who interestingly quotes a number of verses, particularly on *prāyaścitta*.[14] The list is not meant to be exhaustive. A comprehensive list of all available quotations from Devasvāmin to determine the importance of his contribution to *dharmaśāstra* is in preparation.

[14] These verses on *prāyaścitta*, over 25 in number, are not included in the list below. Whether Devasvāmin wrote a work in verses cannot be ascertained. One verse (*śrāddhavighne...*) quoted by Kane (op.cit. p. 593) ascribing it to Devasvāmin is cited in the *Smṛticandrikā* (Mysore edn., Śr. p. 139) as *smṛtyantaram* at the end of and after the quotation from Devasvāmin.

I. *Smṛticandrikā*

(1)

asyaiva vacanasyādhyāhāralakṣaṇāśrayaṇam vihāyārthāntaram ucyate: nirādiṣṭadhanaḥ pratibhūr alaṃdhanaś cet syāt sa eva nirādiṣṭaḥ svadhanād eva dadyād iti. anirādiṣṭadhanavad adhamarṇam darśayan na mucyate nirādiṣṭadhanaḥ, kiṃtu dānapratibhūvad dadyād iti tātparyārthaḥ. etac cārthāntaram devasvāminoktam. (Vy. p. 354).

(2)

ye punaḥ smṛtisamuccayakārāḥ śambhu-śrīkara-devasvāmyādayaḥ uddhāraviṣamavibhāgayoḥ śiṣṭācāraṃ kvāpi manyamānā uddhārādiviṣayāṇi bahūni smṛtivākyāni vicārayituṃ granthavistaraṃ cakrire... (Vy. pp. 621-2).

(3)

devasvāmī tu pitṛgṛhāl labdhaṃ bhartṛgṛhāl labdhāpekṣayā pṛthagdhanatayā mātur yautakaṃ mātṛdhanaṃ mātur evety āha. (Vy. p. 662).

(4)

...tasya pūrvoktena sahāvirodhāya devasvāminā tātparyārtha uktaḥ: ubhayatra nānyaḥ pratinidhiḥ kārya iti granthena. (Vy. p. 670).

(5)

atra tṛtīyapadārtho devasvāminā vivṛtaḥ: 'tadīyaṃ sarvaṃ rikthaṃ gotraṃ ca haretaiva' iti. (Vy. p. 671).

(6)

evaṃ sopapattikāṃ patnyabhāve duhitṛgāmitāṃ bruvatā bṛhaspatyādinaiva dauhitragāmi dhanam iti vidhāyakaṃ yad vacanajātaṃ tat putrikāviṣayam eva, na punar aputrikāduhitṛviṣayam iti dhāreśvara-devasvāmi-devarātamatam... (Vy. p. 684).

(7)

devasvāminā tu trisv api śastrahatesu prthag ekoddista-trayam eva kāryam. āhatyavacanābhāvān na pārvanam ity uktam. (Śr. p. 93).

(8)

asya vacanasyoktā visayavyavasthā devasvāminā darśitā - yasya tāratamyāc chīghrataram upasthite pindapitryajñādau deśakālānurodhato dravyabrāhmanābhāvāt sodaśaśrāddhāny akrtvā samvatsarād arvāk sapindīkaranam krtam, tasya krte'pi sapindīkarane - māsikam codakumbham ca deyam tasyāpi vatsaram-iti vākyāt yadā trayodaśam śrāddham prāptamāsikākhyam pretaśrāddham tad anena rsyaśrnga-vākyena nisidhyata iti granthena. (Śr. p. 112).

(9)

naksatram tu śrāddhārthe yadā dinadvayavyāpi śuklapaksa audāyikam 'yat pūrvāhnavyāpi tad grāhyam' iti devasvāminā-uktatvāt. (Śr. p. 132).

(10)

tathā coktam devasvāminā-yasmin kāle yad vihitam tat karma upkramopasamhārayuktam tasmin kāle tasyām tithau yasmin ahani sambhāvayitum śakyate tad uttaram pūrvam vā grāhyam iti. (Śr. p. 135).

(11)

Upakramopasamhārayor ubhayatrāsambhavavisaye tu yad devasvāminoktam 'yasmin samāptis tasyām tithau tasmin kāle sambhavati tasminn ahany upakramya samāpanīyam iti. (Śr. p. 136).

(12)

tathāca devasvāminā naksatraśrāddham udāhrtyoktam-naksatresu kāmyaśrāddhesu tatkāmapradanaksatraprāptau yāvattatkāma-prāpti tasmin rkse śrāddham kuryād abdam ekam yāvat-iti. (Śr. p. 137).

(13)

ata eva devasvāmināpy uktam - etad ṛsyaśṛṅgavacanam sūtakāśaucavisayam. nimittāntaratas tadahrvighāte 'ekoddiste tu samprāpte yadi vighnah prajāyate' ityādismṛtyantaravacanam iti. (Śr. p. 139).

(14)

tathāca devasvāminā śrāddhaśabdārtha evam eva nirūpitah:

pindābhāve'pi nityādau śrāddhaśabdaprayogatah /
śrāddhaśabdo na pindesu nāpi ca dvijabhojane //

atithyādau bhujāsatyām śrāddhaśabdāprayogatah /
pitṛn uddiśya vittādityāgamātram na caiva hi. //

tarpanāder api prāptes tyāgas tatrāpi drśyate /
vidvanmatāny upādāya mama tu etad dhṛdi sthitam //

homaś ca pindadānam ca tathā brāhmanatarpanam /
śrāddhaśabdābhidheyam syād ekasminn aupacārikah //

(Śr. p. 141).

(15)

vitpatir jāmātā atithir vā, atithir ity anye vadantīti devasvāminābhidhānāt. (Śr. p. 160).

(16)

prathamakalpalābhe' nukalpānusthane tu dosam āha sa eva:
prabhuh prathamakalpasya
yo' nukalpena vartate,
na sāmparāyikam tasya
durmater vidyate phalam.
(Śr. p. 160).

(17)

tatra kālākhyah śākavisesah kutherakākṛtir iti devasvāminā nirūpitah. (Śr. p. 211).

(18)
yal loke śubham śākam iti vyapadiśyate tad evātra śubhaśabdenoktam iti devasvāmināabhihitam. (Śr. p. 211).

(19)
gāndhārikā tandulīyaka iti devasvāminā vyākhyātam. (Śr. p. 216).

(20)
kusumbham kantakarahitam abhaksyam; akantakitvaviśistasya kusumbhasya smrtyantare nisedho vidyata iti devasvāmināuktatvāt. (Śr. p. 231).

(21)
śigruh śobhāñjanah. sa ca raktakusumah parivarjanīyo na śvetakusumah. smrtyantare'pi 'raktaśigrum varjayet' iti viśistasyaiva nisedho vidyata iti devasvāmināabhidhānāt. (Śr. p. 237).

(22)
devasvāminapy avirodhārtham evam uktam 'pānau darbhadānapratisedha āsanāstaranārthadarbhavisayah, mantrena grahanavidhānasāmarthyād yājñavalkyavacanāc ca vistarārthā darbhāh pānāv eva deyāh' iti. (Śr. p. 283).

(23)
yat punar aušanasavacanagatavāśabdasya prasiddhārthatvam abhisamdhāyābhihitam devasvāminā 'bhuñjīta pitrsevitam ity etan na naiyamikam' iti. (Śr. p. 364).

(24)
ata evoktam devasvāminā-cūdākaranādihomārtham tv agner jātāraner utpattih na tatsadbhāve'pi vidyamānāgnipaksabādhanam ayuktam iti. (Āśauca, p. 22).

II. Hemādri

(25)

devasvāmināpy uktam: yadi pūrvāhne parvasamdhiḥ samāpyeta (?bhāvyeta) tato nitarām eva ca śobhanam. yadi punar aparāhne rātrau vā tad ahar ruposya śvobhūte yāgaḥ. (III.2, Pariśeṣakhaṇḍa, p. 324. This corresponds to a passage on p. 121 of the *Saṃkarṣakāṇḍabhāṣya*).

(26)

ata eva devasvāminābhihitam 'trisv api śastrādihateṣu pṛthag ekoddiṣṭatrayam eva kāryam, na tu pārvaṇam āhatyavacanābhāvād iti. (ibid., p. 496).

(27)

ata eva devasvāmināpy uktam: etad ṛsyaśṛṅgavacanaṃ sūtakāśaucaviṣayam. nimittāntaratas tu tadahar-vighāte 'ekoddiṣṭe tu samprāpte yadi vighnaḥ prajāyate' ityādismṛtyantaravacanam iti. (ibid., p. 565).

III. Parāśaramādhavīya

(28)

trisv api pitrādiṣu śastrahateṣu trayāṇām api pṛthak pṛthag ekoddiṣṭam eva kāryam iti devasvāmimatam. (Ācāra. p. 328).

(29)

atra trayāṇām śastrahatatve pārvaṇaśrāddhasya sākṣād vidhāyakavacanābhāvād ekasmin dvayor vetyasyopa-lakṣaṇārthatvenāpy upapatter ekoddiṣṭatrayam eva kāryam iti devasvāmimataṃ yuktam iti pratibhāti. (Ācāra. p. 328-9).

(30)

devasvāminā̃py evam eva viṣayavyavasthā kṛtā. 'etad ṛṣyaśṛṅgavacanam āśaucavighnaviṣayam, nimittāntaratas tadaharvighāte "ekoddiṣṭe tu samprāpte yadi vighnaḥ prajāyate" ityādismṛtyantaravacanam' iti. (Ācāra. p. 331).

(31)

viṭapatir jāmātā, atithir vā. tad uktam devasvāminā 'viṭpatir atithir ity anye vadanti'. (Ācāra. p. 334).

IV. Sarasvatīvilāsa

(32)

dhāreśvara-devasvāminau tu vijñānayogimatānuvartināv eva. yathoktam devasvāminā: ubhayatrāpi nānyaḥ pratinidhiḥ kārya iti. asyārthaḥ: ubhayatrāpi 'yady ekaputrā bahavaḥ', 'bhrātṛṇām ekajātām' iti vacanadvaye. bhrātṛsute putrapratinidhitayā kathamcit kartum śakye sati tadanyo na pratinidhiḥ kārya iti. (p. 395).

(33)

atra dhāreśvara-devasvāmi-devarāta-śrīkarādayo duhitṛgāmi dhanam iti vidhāyakam vacanajātam putrikāviṣayam evety āhuḥ. tanmatam dūṣayati candrikākāraḥ. tathā ca candrikāgranthaḥ: dhāreśvara-devasvāmi-devarātamatam pratitantra-siddhāntānabhijñānonmādakalpitam nirastam veditavyam iti. (p. 414).

V. Caturviṃśatimatasaṃgrahavyākhyā

(34)

devasvāmi-mādhava-pārijātakārādays tu māsike āśaucenopahate sūtakānantaraśuddhidina eva kartavyam. 'puras tadahar eva' iti dvitīyapakṣas tu... iti vyavasthām āhuḥ. (p. 135).

VI. Vaijayantī

(35)
devasvāmī tu aprattāsv api daśāham āha.
(p. 362 on *āśauca*).

(36)
trisv api śastrahatesu prthag ekoddistatrayam iti devasvāmivacanāc ca. (p. 787 on *śrāddha*).

VII. Dattakamīmāṃsā

(37)
tad etat spastīkrtam devasvāminā 'ubhayatrāpi nānyah pratinidhih kāryah' ityanena. (p. 83).

VIII. Vīramitrodaya

(38)
dhāreśvara-devasvāmi-devarātaprbhrtayas tu 'pitā hared aputrasya' ityādivacanavirodhaparihārāya duhitradhikārapratipādakavacasām putrikāvisayatvam tadabhāve tu pitrādaya eva yathoktakramenādhikārina ity āhuh. (p. 519).

(39)
bhartrgrhalabdhāt prthagdhanatayā pitrgrhalabdham mātrdhanam yautakam. yautaśabdasyāmiśranam apy arthah. yu miśranāmiśranayor iti dhātupāthāt. yutasiddhāv iti prayogāc ceti devasvāmy āha. (p. 548).

IX. Śrāddhamayūkha

(40)
atra mādhava-devasvāmi-prabhrtayah 'ekasmin dvayor' ity asya yathāśrutatve vākyabhedāpattyā etasyopalaksanatvena trisv api śastrahatesv ekoddistatrayam eva kāryam.

(40) cont.

śastrahanane nimitte ekoddiṣṭamātravidhiparatvād vākyasya. 'ekasmin dvayor' iti tu 'ekaṃ vṛṇīte dvau vṛṇīte' ityādivad anuvāda ity āhuḥ. (p. 8).

X. Vidhānapārijāta

(41)

yat tu devasvāminoktaṃ triṣv api śastrahateṣu pṛthag ekoddiṣṭatrayaṃ kāryaṃ na tu pārvaṇam āhatyavacana-abhāvād iti. (p. 613).

XI. Bālambhaṭṭī

(42)

idaṃ hemādrimatam. devasvāmi-mādhava-pārijātakārā-dayas tu māsike āśaucavighnite sūtakānantaraṃ śuddhidina eva tat kāryam iti... (Sr. p. 547).

Bibliography

Bālambhaṭṭī, ed. by J.R. Gharpure, Bombay, 1914.

Bhagavaddatta: *History of Vedic Literature*, 2nd vol., The Commentators of the Vedas, Pranava Prakasana, New Delhi, 1976.

Caturvargacintāmani by Hemādri, Bibliotheca Indica 72, Calcutta, 1873-1911.

Caturvimśatimatasamgrahavyākhyā by Bhattojidīksita, Benares Sanskrit Series 33, Benares, 1907-8.

Dattakamīmāmsā by Nandapandita, Anandashrama Sanskrit Series 116, Poona, 2nd edition, 1954.

Kane, P.V.: *History of Dharmaśāstra*, vol. I, revised edition, Bhandarkar Oriental Research Institute, Poona, part I, 1968, part II, 1975.

Parāśaramādhavīya by Sāyana Mādhavācārya, ed. V.S. Islamapurkar, Bombay Sanskrit Series 47, Poona, 1919.

Samkarṣakāndabhāsya by Devasvāmin, ed. S. Subrahmanya Sastri, University of Madras, 1965.

Sarasvatīvilāsa by Pratāparudra, Vyavahāra kānda, ed. by Shama Sastry, Government Branch Press, Mysore, 1927.

Smṛticandrikā by Devanabhatta, ed. R. Shama Sastry and L. Srinivasacharya, 6 vols., Government Branch Press, Mysore, vol. I, Samskāra Kānda (1914), vol. II, Āhnika Kānda (1914), vol. III, Vyavahāra Kānda, part I (1914), part II (1916), vol. IV, Śrāddha Kānda (1918), vol. V, Āśauca Kānda (1921).

Śrāddhamayūkha of Bhagavantabhāskara by Nīlakantha, ed. by J.R. Gharpure, Bombay, 1927.

Vaijayantī, Visnusmṛtivyākhyā by Nandapandita, Adyar Library Series, Madras, 1964.

Vidhānapārijāta by Anantabhatta, Bibliotheca Indica 156, Calcutta, 1905-12.

Vimalodayamālā of Jayantasvāmin, ed. K.P. Jog, University of Poona, 1974.

Vīramitrodaya by Mitra Miśra, Vyavahāra Prakāśa, Chowkhamba Sanskrit Series 30, Benares, 1906-32.

STUDIES IN THE VERSES RELATING TO *NIRṆAYA* IN THE *VYĀSASMṚTI*

Heramba Chatterjee Sastri

Of the several *Dharmaśāstras* that have not yet seen the light of the day in their complete form the *Vyāsa-dharmaśāstra* is one. Vyāsa's name is mentioned in the list of writers on *Dharmaśāstra* as presented in the *Yājñavalkya-saṃhitā*.[1] The name of Vyāsa is also included in the list of the writers of *Upasmṛti*.[2] In the absence of the text of Vyāsa in its complete form it is not possible to verify the authenticity of the claim of Vyāsa both as writer of *Smṛti* and *Upasmṛti*. There are other problems associated with Vyāsa. Vyāsa is the celebrated author of the *Mahābhārata*, which also contains in several places directives which partake of the same characteristics as those of the *Dharmaśāstras*. Mm.P.V. Kane has pointed out some such cases where Viśvarūpa, commentator of the *Yājñavalkya-saṃhitā* mentions some verses as of Vyāsa which actually are taken from the *Mahābhārata*. Same is the case with Medhātithi on the *Manu-saṃhitā* and Maskarin on the *Gautamadharmasūtra*. Both of them ascribe verses to Vyāsa which are traced in the *Mahābhārata*.[3] Vyāsa

[1] *Y.S.* 1.4-5. For a discussion on the number of *Dharmaśāstras (Smṛtis)* see introduction of my *Dāyabhāga*, Howrah, 1978 , at p. VII, f.n. 1o and 11.

[2] See *Smṛticandrikā*, p. 2; *Sarasvatīvilāsa*, p. 13 for mention of the *Upasmṛtis*. It may be added here that there is hardly any basis for making distinction between the *Smṛtis* and the *Upasmṛtis*. Some of the names are interchangeable.

[3] See *History of Dharmaśāstra*, I,1 (revised ed., 1968), p. 53o.

shares with Bṛhaspati an interesting directive recommending even condemned means of livelihood for the sake of maintenance of old parents, a wife dedicated to pious disposition and a minor son.[4] We have a *Vedavyāsasmṛti* with four chapters (on *Brahmacarya, Stryadhikāra, Gṛhasthāhnika, Gṛhasthāśramapraśaṃsā*) included in the *Smṛtīnām samuccayaḥ* in the A.S.S. (No. 48) published from Punyapattana in 1905 edited out of five manuscripts (pp. 357-371). Pañcānana Tarkaratna published from Calcutta a compilation text under the title *Ūnaviṃśasaṃhitā* (Vaṅgābdha, 1310). The *Vyāsasaṃhitā* is included there in pp. 377-392. In the compilation text edited by Pt. Jīvānanda Vidyāsāgara,[5] the text of Vyāsa is recorded in Part II, pp. 321-342. The texts are more or less the same with variations of minor nature. Unfortunately the portions of the text of Vyāsa containing discussions on *Vyavahāra* have not yet been unearthed and that makes a strong case for a reconstruction of the text of the *Vyavahāra* portion of the *Vyāsasmṛti*.[6]

[4] *vṛddhau ca mātāpitarau sādhvī bhāryā sutaḥ śiśuḥ /*
apy akāryaśataṃ kṛtvā bhartavyā manur abravīt // Bṛ.S.apaddharma-I; Vyāsa, quoted in *Kṛtyakalpataru, Gṛhasthakāṇḍa,* p. 229.

[5] *Dharmaśāstrasaṃgraha*. Ed. Jivananda Vidyasagara, Calcutta, 1876.
The Dharmaśāstra, text. vol. I. Ed. Manmatha Nātha Dutta, Calcutta, 1918; *Vyāsasaṃhitā*, pp. 467-488. Text: *Vyāsasaṃhitā*, with English translation, by M. Dutta, Calcutta, 1917.

[6] For earlier attempts on reconstruction of different *Smṛti* texts, the following may be noted:
J. Jolly, collection of Hārīta's *Vyavahāra* materials in the *Bayerische Akademie der Wissenschaften*, p. 18;
Manzini translated the fragments of Pitāmaha in the *Atti del Reale Istituto Venete di Scienze, Lettere ed Arti* 63, pt. 2.
A.A. Führer collected 84 verses of Bṛhaspati with German translation and notes (Leipzig, 1879).
P.V. Kane collected the views ascribed to Śaṃkhalikhita in the *Annals of the Bhandarkar Oriental Research Institute*, Poona, VII-VIII (1926-27); he also collected the text of Kātyāyana as *Kātyāyanasmṛtisāroddhara*, Bombay, 1933.

Dr. B.K. Ghosh published 116 verses of Vyāsa on *Vyavahāra* in *Studia Indo-Iranica, Ehrengabe für Wilhelm Geiger*, München 1931. Another lot of verses on *Vyavahāra* was published by him in the *Zeitschrift für Indologie und Iranistik*, Band 9, Heft 1, Leipzig, 1932. The two taken together were published under the title *Vyāsasmṛti* (*Vyavahāra* chapter) under the editorship of the same editor in the Law Series 1 of Bhāratī Mahāvidyālaya Publications, Calcutta, 1944.[7]

K.P. Jayaswal rightly points out that the verses of Vyāsa on *Vyavahāra* have their importance.[8] Kalpataru quotes about 8o verses of Vyāsa on *Vyavahāra* and significantly a good number of *Vyavahāra* verses of Vyāsa appear in the *Aparārka* commentary on the *Yājñavalkyasmṛti* and in the *Smṛticandrikā*.[9]

6 (cont.)
N.C. Bandopadhyaya also collected verses of Kātyāyana under the title: *Kātyāyanamatasaṃgraha*, Calcutta, 1927.
K.V.R. Aiyangar collected 121 additional verses of Kātyāyana in his paper to the *Kane Festschrift*, pp. 7-17 (Poona Oriental Series, No.75, Poona, 1941); he also collected the verses of Bṛhaspati under the title *Bṛhaspatismṛti*, Baroda, 1941.
See also S.C. Banerjee, 'Reconstruction of the Dharmasūtras', in: *Dharmasūtras, a study in their origin and development*, Calcutta, 1962, pp.237-344.

7 Regarding Vyāsa's verses on *ācāra* and *prāyaścitta* the observations of Dr. Ghosh deserve mention: 'I also collected Vyāsa's verses on *ācāra* and *prāyaścitta*, but now no more than twelve years ago I find any reason justifying the publication of those insipid sayings of a person who probably had nothing but his name in common with the author of the work on *vyavahāra* of which the available fragments preserved in quotations are being presented here.' Introductory note of the editor of the *Vyāsasmṛti*.

8 *Manu and Yājñavalkya*, Tagore Law Lecture, 1917, published in 193o, Calcutta, p.3oo.

9 P.V. Kane while commenting on the quotations of Vyāsa in the Aparārka commentary has the following observations: "But as Aparārka makes no distinction between Vyāsa, the jurist, Vyāsa, the reputed compiler of the Mahābhārata and Vyāsa who wrote on the Saṃskāras, Śrāddha and other topics, it appears that the jurist and the writer on other topics of dharma were separated from him by several centuries." *History of Dharmaśāstra*, I,1, 1968, p. 533.

Without going into the question further it is deemed worthwhile to make reference to certain views ascribed to Vyāsa which may be marked as his own view. Thus with reference to *bhukti* (possession) it has been laid down by Vyāsa that if the owner stays with his capacity to resist, he will lose his ownership if a person other than the owner enjoys the owner's land (let us say, in his presence) for a period of twenty years, when the territory is governed by a king (i.e. when there is no lawlessness).[10] Vyāsa speaks of *bhoga* as having five constituents or characteristics.[11] Again against four types of sureties men-

[10] *varṣāṇi viṃśatir yasya bhūr bhuktātha parair iha /*
sati rājñi samarthasya tasya seha na siddhyati // (verse 75 in Ghosh's *Vyāsasmṛti*). Quoted in the Aparārka com., p. 632; *Sm.C.*, p.155 (*Vy.Kā*; Bibliotheca Sanskrita No. 45); *Sarasvatīvilāsa*, p.129. Univ. of Mysore edition; *Vīr. Vy.Pr.*, p. 157, Chowkhamba Sanskrit Series). The portion underlined speaks of a new feature not mentioned by other writers. For detailed discussion on possession see Kane, *H.Dh.*, III, p. 317-329; A. Thakur, *Hindu Law of Evidence*, Calcutta, 1933, pp.22o-24o.

[11] *sāgamo dīrghakālaś cā-vicchedo paravojjhitaḥ /*
pratyarthisannidhānaś ca pañcāṅgo bhoga iṣyate // (verse 84)
Quoted in the *Sm.C.*, p.161, where the significance of the expression *pañcāṅga* has been pointed out in the following form: *'pañcāṅga iti vadan ekāṅgavaikalye'prāmāṇyam eva bhogasya iti darśayati.'* p.162. The verse has been explained by Mitramiśra in his *Vyavahāraprakāśa*, p.154. Here for the portion underlined the reading is: *'... paribhogo'pi pañcadhā.'* This has also been quoted in the *S.V.*, p.13o. This is almost the same as a verse ascribed to Pitāmaha:

sāgamā dīrghakālā ca vicchedoparavojjhitā /
pratyarthisannidhānā ca bhuktiḥ pañcavidhā smṛtā //

Quoted in the *S.V.*, p.13o; *Sm.C.*, p.16o. See also *Aparārka*, p.63o. *Vyavahāranirṇaya*, p.129, refers to a text of Bṛhaspati of identical nature:

sāgamo dīrghakālaś ca nicchidroparavo dhanam /
pratyarthisannidhānaṃ ca paribhogo'pi pañcadhā // *Bṛ.S.* VII. 64.
See also *Bṛhaspatismṛti*, VII.23-24.

tioned by Bṛhaspati[12] and five types recognised by Kātyāyana,[13] Vyāsa makes mention of seven varieties.[14] In tune with the provisions made by Kātyāyana that there is equal ownership in respect of the property of the grandfather between the father and the son,[15] and in conformity with what has been stated in categorial terms by Yājñavalkya,[16] as also by Bṛhaspati,[17] Vyāsa expresses his view that in respect of the houses and the landed properties inherited from the ancestor, the father and the sons have equal shares, but the sons cannot claim a share in the property acquired by the father himself in case father does not consent to such a partition.[18]

These are some of the cases to point out that the text of Vyāsa offers enough scope for further verification and

[12] *darśane pratyaye dāne ṛṇidravyārpaṇe tathā /*
catusprakāraḥ pratibhūḥ śāstre dṛṣṭo manīṣibhiḥ // *Br.S.* X. 73.

[13] *dānopasthānavādeṣu viśvāsaśapathāya ca /*
lagnakaṃ kārayed evaṃ yathāyogaṃ viparyaye // *Kāt.*, 53o. For a discussion on the number of sureties see Chatterjee, *The Law of Debt in Ancient India*, Calcutta, 1971, pp. 144-151.

[14] *lekhye'kṛte ca divye vā dānapratyayadarśane /*
gṛhītabandhopasthāne ṛṇidravyārpaṇe tathā // Quoted in *Vy.Pr.*, 248. The verse has been explained in the *Smṛticandrikā*, p.347.

[15] *paitāmahaṃ samānaṃ syāt pituḥ putrasya cobhayoḥ / Kāt.* 839

[16] *bhūr yā pitāmahopāttā nibandho dravyam eva vā /*
tatra syāt sadṛśaṃ svāmyaṃ pituḥ putrasya cobhayoḥ // II. 121

[17] *dravye pitāmahopātte sthāvare jaṅgame'pi vā /*
samam aṃśitvam ākhyātaṃ pituḥ putrasya caiva hi // XXVI. 14

[18] *kramāgate gṛhakṣetre pitā putrāḥ samāṃśinaḥ /*
paitṛke na vibhāgārhāḥ sutāḥ pitur anicchayā (anicchataḥ) // 248
Nīlakaṇṭha ascribes this verse to Bṛhaspati. (See *Vyavahāramayūkha*, p.59). First line of Vyāsa's verse quoted in the *Sm.C.*, p.649; in the *Sarasvatī-vilāsa*, p.375.
See *Vyavahāracintāmaṇi*, p. 148, for an attempt to explain the eight types.

scrutiny. There are other problems relating to the text of Vyāsa arising out of the mention of *Gadyavyāsa* in the *Smṛti-candrikā* (*Āhnika*, p. 224), *Laghu-Vyāsa*, *Bṛhad-Vyāsa*, *Mahā-Vyāsa*, *Dāna-Vyāsa*, *Vṛddha-Vyāsa* and the like (for which reference may be made to Kane, *History of Dharmaśāstra*, I,1, 534). In this short paper it is not possible to discuss those problems and it is proposed to discuss the verses of Vyāsa in respect of *nirṇaya*, which in the *Vyāsasmṛti* edited by Dr. B. K. Ghosh have been introduced as: *vyavahāranirṇaya*.

pramāṇahetucaritaiḥ śapathena nṛpājñayā /
vādisampratipattyā vā nirṇayo'ṣṭavidhaḥ smṛtaḥ // 1

English translation: Decision is regarded as of eight types (i.e. may be arrived at through any of the eight means), such as - three recognized modes of proof (document - *likhita*; possession - *bhukti* and witness - *sākṣi*); circumstantial evidence (*hetu*); established usage or convention (*carita*); oath or ordeal; royal order and declaration of the truth of the claim.[18a]

Notes: Nārada by way of enumeration of the judicial proceedings speaks of *nirṇaya* as the fourth stage, the first being *āgama* (connection or the hearing of the complain - *āgamo'rthi-vacanaśravaṇam* as explained in the *Sarasvatīvilāsa*, p.75), *vyavahārapada* (ascertainment as to the title of law in which it is to be included) coming next in order, followed by cure and redress of the grievances (*cikitsā* - explained as *pratijñottarapramāṇānāṃ vicāraḥ* in *S.V.*, p. 75) and finally resting with *nirṇaya* (decision - *pramāṇato jayāvadhāraṇam*).[19]

Yājñavalkya speaks of *vyavahāra* as having four feet or constituents (*catuṣpād vyavahāro'yaṃ vivādeṣūpadarśitaḥ*. II.8), the fourth of which has been pointed out by Vijñāneśvara by making reference to a *Smṛti* text, as *sādhyasiddhi:*

[19] *āgamaḥ prathamaṃ kāryo vyavahārapadaṃ tataḥ /*
cikitsā nirṇayaś caiva darśanaṃ syāc caturvidham // N.S. 1.36.
N.M.S. **reads** ***vivitsā*** (1.3o) and Bhavasvāmī explains:
vivitsā ***niveśitākṣarapratīvacanavicāraṇā.***

bhāṣottarakriyāsādhyasiddhibhiḥ kramavṛttibhiḥ /
ākṣiptacaturaṃśas tu catuṣpād abhidhīyate //

Mitramiśra categorically states that the last constituent, namely, *sādhyasiddhi*, is synonymous with what is otherwise called *nirṇaya*.[20] The *Sarasvatīvilāsa* in clear terms speaks of the fourth *pāda* as *nirṇaya*.[21]

The verse of Vyāsa mentions eight types of *nirṇaya* and in this context it is relevant to state that Bṛhaspati while speaking about *nirṇaya* as of four types refers to the view that according to some it is of eight varieties.[22]

There is nothing wrong if by *kaiś cit* the view of Vyāsa has been referred to. In the *Śukranītisāra*, IV.5.271 *nirṇaya* has been stated to be of six types and by way of justification it may be suggested that Śukra regarded *pramāṇa* in general as one.[23]

It is Bṛhaspati who in clear terms states that decision in doubtful cases is to be arrived at by any one of the four means, namely, *dharma* (moral law), *vyavahāra* (technical judi-

[20] *atha nirṇayāparaparyāyaḥ siddhipadaḥ. Vyavahāraprakāśa*, p.86.

[21] *bhāṣāpādas tu tatrādyo dvitīyo marśanaṃ tathā /*
kriyāpādas tathā cānyaḥ caturtho nirṇayas smṛtaḥ //
Text without authority quoted in the *Sarasvatīvilāsa*, p.62. A verse of identical nature has been ascribed to Bṛhaspati:
pūrvapakṣaḥ smṛtaḥ pādo dvitīyas tūttaras tathā /
kriyāpādas tathā vācyaś caturtho nirṇayas tathā // Bṛ.S. 1.17.

[22] The verse of Bṛhaspati has been mentioned by *Aparārka*, p. 611; *Kṛtyakalpataru, Vyavahārakāṇḍa*, p. 16 and others:
caturvidhaḥ pūrvapakṣaḥ pratipakṣas tathaiva ca /
caturdhā nirṇayaḥ proktaḥ kaiś cid aṣṭavidhaḥ smṛtaḥ // Bṛ.S. II.36.

[23] The importance of *Śukranīti* has of course of late been belittled for which reference may be made to L. Gopal, 'The Śukranīti, A nineteenth-century text', in: *Bulletin of the School of Oriental and African Studies*, XXV, pt.3, 1962, pp. 524-56.

cial formalities), *caritra* (local custom or convention), *nṛpājñā* (a royal edict).[24] Reference has already been made to the description of *vyavahāra* as having four feet or constituents by Yājñavalkya (II.8). Nārada declares that *vyavahāra* is *catuṣpāda*.[25] Kātyāyana also indicates the four feet of *vyavahāra* by making reference to the four stages of processes in a law-suit. They are in the form of the plaint (*pūrvapakṣa*), the reply (*uttara*), the deliberation as to the burden of proof (*pratyākalita*) and the adducing of proof (*kriyāpāda*).[26] Bṛhaspati himself has a verse of identical nature.[27] *pratyākalita* refers to 'the deliberation of the judge and the assessors as to where the *onus probandi* lies and as to the method of proof.' (*pratyākalitam uttarāṅgīkārānantaram api vivadamānayoḥ kasya atra kriyopanyasanam nyāyyam iti prāḍvivākādīnāṃ vimarśanam. Smṛticandrikā, Vy. Kā.* p.27).[28] Nārada has also the four feet

[24] *dharmeṇa vyavahāreṇa cāritreṇa nṛpājñayā /*
catusprakāro'bhihitaḥ sandigdhe'rthe vinirṇayaḥ // Bṛ.S. IX.1.

[25] *sa catuṣpāc catuḥsthānaś catuḥsādhana eva ca /*
caturhitaś caturvyāpī catuskārī ca kīrtyate // 1.8.

[26] *pūrvapakṣaś cottaraṃ ca pratyākalitam eva ca /*
kriyāpādaś ca tenāyaṃ catuṣpāt samudāhṛtaḥ // Kāt. 31.

[27] *bhāṣāpādottarapādau kriyāpādas tathaiva ca /*
pratyākalitapādaś ca vyavahāraś catuṣpadaḥ // Bṛ.S.* II.1.
* This however should not be confused with *pratyākalita* mentioned by Nārada as a supplementary statement:
vādibhyāṃ likhitāc cheṣaṃ yat punar vādinā smṛtam /
tat pratyākalitaṃ nāma svapāde tasya likhyate // N.S. II.21

[28] Devaṇabhaṭṭa in his *Smṛticandrikā* refers to another interpretation of the word *pratyākalita*: '*kecid upanyaste pramāṇe pramāṇābhāvaśaṅkāpanodakaṃ jayaparājayanirṇayaphalakaṃ vimarśanaṃ pratyākalitam āhuḥ. tanmate pādasaṃkhyaiva hi vivakṣitā na tu kramaḥ... yat tu Yājñavalkyenoktaṃ - tatsiddhau... anyathā iti tatrāpi siddhiśabdena siddhiphalakaṃ pratyākalitam ucyate.* P. 28
See here the observations of Vijñāneśvara on *Yāj.* II.8:

of *vyavahāra* as *dharma, vyavahāra, caritra* and *rājaśāsana.*[29]

The question that may pertinently be raised is: what is the actual position of four types of *pāda* - *dharma, vyavahāra, caritra* and *rājaśāsana* as stated by Nārada; and the four (*vi*)-*nirṇayas* of the same name as mentioned by Bṛhaspati? Is there any sort of relationship between the four feet and the four *nirṇayas*? The reply to the question is to be sought in the fact that from the explanation offered by Vijñāneśvara on the verse of Yājñavalkya (II.8) already referred to, it is clear that the *pādas* (*bhāṣā; uttara; kriyā* and *sādhyasiddhi*) refer to the gradual procedural steps for arriving at a decision.

nirṇayas are decisions and the eight types of *nirṇayas* are nothing but the eight varieties of methods or proof that are taken to for arriving at the right decision. It would therefore be wise to interpret the verse of Nārada (1.1o) as making reference to the four feet of *vyavahāra* in a secondary sense (*gauṇa*).[3o] Bṛhaspati therefore is more methodical in making out a

28 (cont.)

uttarābhidhānānantaram sabhyānām arthipratyarthinoḥ kasya kriyā syād iti parāmarśalakṣanasya pratyākalitasya yogīsvarena vyavahārapādatvenānabhidhānāt vyavahartṛsambandhābhāvac ca na vyavahārapadatvam iti sthitam.

29 *dharmaś ca vyavahāraś ca caritram rājasāśanam /*
catuṣpād vyavahāro'yam uttaraḥ pūrvabādhakaḥ // N.S. 1.1o

3o A suggestion to this effect has been made by Kane in his *History of Dharmaśāstra,* III, p.26o.
In this context the following text of Devaṇabhaṭṭa's *Smṛticandrikā* deserves special mention:
nanu pratijñottarapramāṇanirṇayānāṃ vyavahārapadatvaṃ na dharmādīnām iti kim idam uktam ? ucyate, nirṇayapādo dharmādyanusāreṇa caturvidhaḥ. tatra yadanusāreṇa yo nirṇayaḥ saḥ tacchabdena nirdiśyate. tena dharmādibhir eva catuṣpāttvavarṇanaṃ yuktam eva. Vyavahārakāṇḍa, pt.1, p.21.
In his *Vīramitrodaya-vyavahāraprakāśa* (p. 6) Mitramiśra has interesting observations which are relevant in the present context:

clear distinction between the two - the four feet (as recorded in II.1) and the four *nirṇayas* (as specifically stated in IX.1).

The four varieties of *nirṇaya* as specifically mentioned by Bṛhaspati have been defined by Nārada (in the form of four feet) and Kātyāyana (as *nirṇaya*) though the latter does not mention the number of *nirṇaya* as four. Bṛhaspati, quite interestingly describes each of these four again in two ways.[31] The eight types of *nirṇaya* as mentioned by Vyāsa in the verse mentioned above include *carita*, and *nṛpājñā* (*rājaśāsana*), which are mentioned and defined by Nārada, Kātyāyana and Bṛhaspati. It is rather surprising that Vyāsa eliminates two very important constituents of *nirṇaya*, namely, *dharma*[32] and *vyavahāra*.

3o (cont.)
yadyapi pratijñādīnāṃ vakṣyamāṇānāṃ sākṣād vyavahārasvarūpaghaṭakatvād vyavahārapādatvaṃ yuktaṃ, dharmādīnāṃ tu tatra satye sthito dharma iti nāradoktaprakāreṇaiva nirṇayamātrahetutvān na sākṣād vyavahārapadatvam arham. yājñavalkyādibhir ata eva teṣām eva vyavahārapādatvam uktam... tathāpi nirṇayākhyacaturthavyavahārapādahetutvena gauṇam eva vyavahārapādatvam eṣām atroktam. vyavahārapadena nirṇaya eva vā lakṣyate. taddhetutvaṃ tatpādatvam iti draṣṭavyam.

31 ***ekaiko dvividhaḥ proktaḥ kriyābhedān manīṣibhiḥ /***
aparādhānurūpaṃ tu daṇḍaṃ ca parikalpayet // *Bṛ.S.* IX. 2.

32 Nārada speaks of *dharma* as based on truth (*tatra satye sthitho dharmaḥ, N.S.* 1.11) Asahāya in his *bhāṣya* by way of elaboration points out that where both the parties adhere to truth in their statements there is no further necessity of judicial procedure, written proof or royal edict. This point has further been explained in clear terms by Bhavasvāmī in his commentary: *..tathābhūtākhyāne ubhayor api pratipattau sākṣyādibhiḥ prayojanābhāvāt dharmavyavahāraḥ. yathā kaś cit brūyāt mamāsau dhārayati dāpyatām iti; svāmināhūya pṛṣṭaḥ sa cāha: satyaṃ dhārayāmi dadāni ceti samāpto dharmavyavahāraḥ.*
Kātyāyana by keeping in his mind the *vyavahārapada* called *ṛṇādāna* defines the *dharma* variety of *nirṇaya* wherein in a dispute, say, relating to debt, the offender (here the creditor) admits his own fault (in the form of lending of the sum from the party concerned) and the person lending out the money (accordingly) gets back his money:

We may feel tempted to offer the suggestion that the *nirṇaya* of the type of *vādisampratipatti* as we shall have occasion to show, partakes of the nature of the *dharma* variety of *nirṇaya* as defined by Kātyāyana. This gets strenghthened by the interpretation of the verse of Kātyāyana (no. 35),[33] by Mitramiśra where actually the expression *'sampratipatti'* has been used.

Bṛhaspati, as already stated, describes each of these four types of *nirṇaya* as having two characteristics. So far as *dharma* is concerned, Bṛhaspati describes the first variety of *dharma* (*nirṇaya*) as one when the matter in dispute is decided correctly after due deliberation (*yuktyā*) and when it is examined thoroughly through oath or ordeal.[34]

32 (cont.)

doṣakārī tu kartṛtvaṃ dhanasvāmī svakaṃ dhanam /
vivāde prāpnuyād yatra dharmeṇaiva sa nirṇayaḥ // Kāt. 35.
The appositeness of the appellation may be observed here in as much as the offender impelled by moral sense deems it to be his duty to admit his offence and as such the adjudicators have not to trouble themselves much for determining the truth. It may be stated here that this definition by Kātyāyana is in conformity with the definition of *dharma* variety of *nirṇaya* of the second type:
prativādī prapadyeta yatra dharmaḥ sa nirṇayaḥ. Bṛ.S. IX. 4.

33 *vākpāruṣyasteyādidoṣakārī vyavahārapravartanam antareṇaivānutāpādinā dharmābhimukho'dharmād bhītaś ca svasya doṣakartṛtvaṃ svayam abhyupaiti. yatra dhanasvāmī dharmābhimukhād adharmabhīroś cādharmaṇāder vyavahāraṃ vinaiva svakīyaṃ dhanam āpnoti, tarobhayatra saṃpratitapattyuttara iti yāvat. dharmeṇaiva nirṇaya ity arthaḥ. at evoktaṃ tatra satye sthito dharmaḥ. Vyavahāraprakāśa,* p. 7.

34 *samyag vicārya kāryaṃ tu yuktyā samparikalpitam /*
parīkṣitaṃ tu śapathaiḥ sa jñeyo dharmanirṇayaḥ // Bṛ.S. IX. 3.
The interpretation offered by Devaṇabhaṭṭa is simply a synopsis of the verse of Bṛhaspati without going into the details. Thus far it is clear that in this type of decision it is truth which is ascertained through the examination of facts:

The second definition of *dharma* by Bṛhaspati deserves our special attention. According to the second definition of *dharma-nirṇaya* the defendant admits the accusations levelled against him or furnishes clear evidence of his innocence by passing through an ordeal or oath.[35] The difference between the two definitions of *dharma* presented by Bṛhaspati lies in the fact

34 (cont.)

saha tattvānusaraṇena kṛtaḥ prathamo dharmākhyaḥ nirṇayaḥ.
Smṛticandrikā, Vy.Kā. p.22.
It is interesting that Bṛhaspati here insists on the ascertainment of facts and it may be stated that this is strictly of general nature common to all types of *nirṇaya*. More interesting is the fact that Bṛhaspati in his delineation of this variety of decision has introduced two more elements, namely, *yukti* and *śapatha* (oath or ordeal). As we shall have occasion to see, *hetu* may be equated with *yukti*. *śapatha* rightly may be included under the *pramāṇa* on the basis of the statement of Yājñavalkya:
pramāṇaṃ likhitaṃ bhuktiḥ sākṣiṇaś ceti kīrtitam /
eṣām anyatamābhāve divyānyatamam ucyate // II. 22.
Bṛhaspati more clearly differentiates between them, the first three falling under *mānuṣa pramāṇa* and the last under *daiva:*
sākṣiṇo likhitaṃ bhuktir mānuṣaṃ trividhaṃ smṛtam /
ghaṭādyā dharmajāntā tu daivī navavidhā kriyā // Bṛ.S. IV. 7.

35 *prativādī prapadyeta yatra dharmaḥ sa nirṇayaḥ /*
divyair vā śodhitaḥ samyag dvitīyaḥ sa udāhṛtaḥ // Bṛ.S. IX. 4.
The reading of the verse in Aiyangar's edition has not been accepted here and the text quoted in the *Smṛticandrikā* (p. 22) is adopted.
In both the definitions there is provision for the administering of oath or ordeal, which however does not suit well the context. Even if somehow its appropriateness in the first variety may be justified, it does not at all fit in well with the first line of the second definition of *dharma*, which by any means may be taken as self-sufficient to represent the true characteristics of *dharma-nirṇaya*. *'divyair vā śodhitaḥ'* may pertinently be taken out to stand independently conveying the meaning that correct decision consists in the case where the facts (even admitted) are strengthened by oath or ordeal. (This may be gathered from the reading accepted in Aiyangar's ediiton of the text in the second line: *'divyair viśodhitaḥ samyaṅnirṇayaḥ samudāhṛtaḥ'*.)

that whereas in the first definition stress has been laid on the proper ascertainment of fact by the adjudicators, who are to be led by logic, ratiocination and if necessary by accepting an oath or ordeal in addition; in the second variety the major part is played by the defendant himself by way of admitting the charge, reminding us of the supposed golden age[36] in this land where people were dedicated to dharmic ideals. This is the most desirable *nirṇaya* and therefore is mentioned first in the list by Nārada, Kātyāyana and Bṛhaspati.

Non-mention of *vyavahāra* variety of *nirṇaya* by Vyāsa may be accounted for. Nārada is brief in his short exposition '*vyavahāras tu sākṣiṣu*' (1.11), which means that a judicial proceeding rests on the statements of the witnesses. Bhavasvāmī in his commentary does not enlighten us more on the point when it is stated: *visaṃvāde sākṣibhir nirṇīyate, sa sākṣivyavahāraḥ*. It is Mitramiśra who rightly points out in this context that the word *sākṣiṣu* in the text of Nārada should stand for the *pramāṇas* in general: *sākṣigrahaṇaṃ pramāṇopalakṣaṇam*. (*Vy.Pr.*, p.7)

Decision of the *vyavahāra* variety, according to Kātyāyana, arises in the case where the persons in charge of executing the

35 (cont.)
The interpretation offered by Devaṇa is just a summarisation of the verse of Bṛhaspati: *vinā tattvānusaraṇaṃ satyottareṇa vā divyapramāṇena vā kṛto dvitīyaḥ*. *Smṛticandrikā*, p. 22.
By taking into consideration the definition of *dharma-nirṇaya* by Nārada as also by Kātyāyana (already mentioned) it is wise to accept the common element in the three by accepting 'admission by the defendant' as the principal character of *dharmanirṇaya*. As already indicated, this then stands in adjustment with the statement of Vyāsa in '*vādisampratipattyā*.'

36 See in this context the text of Nārada:
dharmaikatānāḥ puruṣā yadāsan satyavādinaḥ /
tadā na vyavahāro' bhūn na dveṣo nāpi matsaraḥ // 1.1.
See also here the statement of identical design by Bṛhaspati:
dharmapradhānāḥ puruṣāḥ pūrvam āsann ahiṃsakāḥ /
lobhadveṣābhibhūtānāṃ vyavahāraḥ pravartitaḥ // Bṛ.S. 1.1.

sacred law (the judges) take use of the modes or methods mentioned in the *Smṛti* texts for arriving at a correct decision.[37]

Bṛhaspati, as already stated, speaks of each variety of *nirṇaya* as having two characteristics. So far as *vyavahāra* is concerned, the first variety of the same (*vyavahāra*) consists in the case where a sentence is founded on an examination of the evidence. The second variety of *vyavahāra* arises when the defendant tells a lie or makes no answer.[38]

[37] *smṛtiśāstraṃ tu yat kiñcit prathitaṃ dharmasādhakaiḥ /*
kāryāṇāṃ nirṇayārthe tu vyavahāraḥ smṛto hi saḥ // Kāt. 36.
Devaṇabhaṭṭa in his *Smṛticandrikā*, p. 22, explains the implication of the verse of Kātyāyana thus: *dharmaśāstranirūpitapratijñottarādyanusāreṇa nirṇayo vyavahārākhya ity arthaḥ.*
Mitramiśra is much more lucid in his expostion when it is stated: *dharmasādhakaiḥ sabhyaiḥ smṛtiśāstraṃ sākṣyādikriyāpratyāyakam arthipratyarthinoḥ kāryanirṇayārthaṃ prathitaṃ prakhyāpitaṃ yatra catuṣpādvyavahārapravartanena nirṇayakaraṇam iti yāvat. Vyavahāraprakāśa*, p. 7.

[38] *pramāṇaniścito yas tu vyavahāraḥ sa ucyate /*
vākcchalānuttaratvena dvitīyaḥ parikīrtitaḥ // Bṛ.S. X. 5.
Devaṇa speaks of *pramāṇa* as having reference to secular modes of proof: *pramāṇam atra mānuṣaṃ vivakṣitam, divyaniścitasya dharmanirṇayakoṭitvāt. Smṛticandrika*, p. 23.
There is however no significant difference between the two varieties of *vyavahāra* mentioned by Bṛhaspati. The main point in both the definitions is that here the decision is arrived at through the examination of different modes of proof as recognised in the *Śāstras*. Whereas in the first case the modes of proof are mentioned in general, in the second definition there is mention of possible circumstances under which such *pramāṇas* are to be applied. What is intended is that in *vyavahārapramāṇas*, whatever that may be, are to be resorted to by the adjudicators when the defendant instead of a positive reply in the form of admission as in *dharma* adopts a tactics of remaining silent (*anuttara*) or of telling a lie. Practically speaking, these are the possible cases where the utility of *pramāṇa* is to be understood.

Vyāsa therefore did not perhaps think is necessary to make separate mention of *vyavahāra* by taking into consideration the fact that it is already included in the category of *pramāṇa* mentioned by him.

The next question that deserves our attention relates to the mention of *hetu* as a separate variety of *nirṇaya*, not mentioned by Nārada, Kātyāyana and Bṛhaspati in the same form. Vyāsa himself explains the meaning of *hetu* by supplying the synonyms in the form of *anumāna* and *tarka*.[39] It is of interest to note that amongst the writers on *Dharmasūtra* it is Gautama who has used the term *tarka*.[40] Kātyāyana almost in tune with the view of Vyāsa applies the word *hetu* and observes that the king should arrive at a decision in all cases of dispute

[39] *anumānaṃ vidur hetuṃ tarkāñ ceti manīṣiṇaḥ. V.S.* verse 2.
The reading *'tarkaś ceti'* as recorded in the *V.S.* (ed. Ghosh) is wrong. His comments in the foot-note are equally insubstantial inasmuch as he has missed the page 117 of the *Sarasvatīvilāsa* (ed. R. Shama Sastry) where the line has been attributed to Kātyāyana. (See verse 242 of the *Kātyāyana-smṛtisāroddhāra*, ed. Kane). Ghosh mentions that in the *Smṛticandrikā (Vyavahārakāṇḍa*, pt. 1, p. 23; ed. L. Srinivasacharya) this verse has been attributed to Vyāsa. Here also the editor wrongly places *'tarka'* in the nominative form. Same is the case with the *Vīramitrodaya-vyavahāraprakāśa* (p.87) where the editor injudiciously uses both *hetu* and *tarka* in the nominative in place of the accusative case.

[40] *nyāyādhigame tarko'bhyupāyaḥ. tenābhyūhya yathāsthānaṃ gamayet. Gautamadharmasūtra* XI. 23-24
In this context the text of Bṛhaspati deserves attention in as much as it is stated that the adjudication devoid of rationication from the dharmic point of view is unjustifiable:
kevalaṃ śāstram āśritya na kartavyo vinirṇayaḥ /
yuktihīne vicāre tu dharmahāniḥ prajāyate // Bṛ.S. 1.114.
The comments of Devaṇabhaṭṭa are: *atas tarkānugṛhītam eva śāstrārtham āśritya nirṇetavyam iti arthād uktaṃ bhavati. Sm.C., Vy.Kā.* p. 55.
A text of an anonymous author has been quoted in the *Smṛticandrikā: Yas tarkeṇānusandhatte sa dharmaṃ veda netaraḥ.* p.55.

through the application of the *pramāṇa*s or through *hetu* (inference) or even through ordeals.[41] In his definition of *hetu* Kātyāyana shares with Vyāsa the same text that *hetu*, *anumāna* and *tarka* are synonymous.[42] Bṛhaspati, while making mention of *anumāna* by name, observes that by arriving at a decision through the application of witnesses, documents and *anumāna* a king earns fame. It is interesting that while mentioning the modes of *nirṇaya* Bṛhaspati observes silence in respect of *hetu* or *anumāna* probably for the reason that *caritra* mentioned as one of the four constituents of *nirṇaya* according to him (IX.1), as we shall have occasion to see, refers to a decision arrived at through *anumāna*. (IX.6).[43]

[41] *pramāṇair hetunā vāpi divyenaiva tu niścayam /*
sarveṣv eva vivādeṣu sadā kuryān narādhipaḥ // Kāt. 241.
It may be observed here that the word *niścaya* in the verse of Kātyāyana can be taken as equivalent to *nirṇaya* in his verse.

[42] Verse 2 of the *Vyāsasmṛti* is exactly the same as the verse 242 of Kātyāyana:
likhitaṃ sākṣiṇo bhuktiḥ pramāṇaṃ trividhaṃ smṛtam /
anumānaṃ vidur hetuṃ tarkaṃ caiva manīṣiṇaḥ //
In another place Kātyāyana refers to *anumāna* in connection with the respective strength of the *pramāṇas:*
anumānād guruḥ sākṣī sākṣibhyo likhitaṃ guru /
avyāhatā tripuruṣī bhuktir ebhyo garīyaṣī // Kāt. 315.

[43] *sākṣilekhyānumānena prakurvan kāryanirṇayam /*
Vitatyeha yaśo rājā bradhnasyāpnoti viṣṭapam // Bṛ. S. IX. 33.

Bṛhaspati in continuation of his discussion on *nirṇaya* speaks of it as a sacred task on the part of the king:
yatraivaṃ vetti nṛpatiḥ nirṇayaṃ tu vratādhvaram /
so'smin loke yaśaḥ prāpya yāti śakrasalokatām // Ibid. IX. 34.
In another verse Bṛhaspati refers to *anumāna* along with witness and document:
aparādhānurūpaś ca daṇḍo'tra parikalpitaḥ /
sākṣilekhyānumānena samyag divyena vājitaḥ // Bṛ.S. IX. 25.

Before discussing in detail the position of *anumāna* at the hands of Bṛhaspati, it is desirable to cast one's glance at Manu on the point. While instructing that the king in his act of adjudication should pay full attention to truth, to the object of dispute itself, to himself, to the witnesses, to the place, time and to the aspect,[44] Manu stresses the importance of inference (*anumāna*) by way of instituting the position of the hunter. What he states is this: 'As a hunter traces the lair of a (wounded) deer by the drops of blood, even so the king shall discover on which side the right lies by inferences (from facts),[45] Manu states in particular that[46] the internal

[44] *satyam artham ca saṃpaśyed ātmānam atha sākṣiṇam /*
deśam rūpaṃ ca kālañ ca vyavahāravidhau sthitaḥ // Manu VIII. 45.

[45] *yathā nayaty asṛkpātair mṛgasya mṛgayuḥ padam /*
nayet tathānumānena dharmasya nṛpatiḥ padam // Manu VIII. 44.

[46] *bāhyair vibhāvayel liṅgair bhāvam antargataṃ nṛṇām /*
svaravarṇeṅgitākāraiś cakṣuṣā ceṣṭitena ca // Manu VIII. 25.

ākārair iṅgitair gatyā ceṣṭayā bhāṣitena ca /
netravaktravikāraiś ca gṛhyate'ntargataṃ manaḥ // Manu VIII. 26.
Medhātithi in his interpretation of the first verse (VIII. 25) observes: *anumānenāpi satyānṛtavāditā vyavahārataḥ sākṣiṇāṃ ca niścetavyā iti ślokārthaḥ. ataś ca svarādigrahaṇaṃ pradarśanārtham. tena yan niścitaliṅgaṃ tenaiva paricchindyād ity uktaṃ bhavati, na punaḥ svarādibhir eva, savyabhicāritvāt teṣām.*
Bhārucī, supposed to be the oldest of the commentators of the *Manusmṛti*, has a discussion on the importance of *anumāna* which deserves our attention here. What he says is this:
kecit tv āhuḥ, savyabhicāritvād anumānasya vyavahārasthitiḥ sākṣibhiḥ syāt, avidyamāneṣu tu sākṣiṣu anumānam apy āśrayaṇīyam. tad etad anyāyyam; yady anumānaṃ vyabhicāri dṛṣṭam nanu sākṣivacanāgamo'pi tathā dṛṣṭaḥ. athātra vivekayatnān nirṇayaḥ, evam anumānādiṣu api bhaviṣyati. yadi cānaumnaṃ vyabhicāri katham avidyamāneṣu sākṣiṣu tannirṇayārtham upādeyam ity ācakṣītā. tasmād yuktopadeśam anumānam. tathā ca kṛtvā vyavahārād anyatrāpi laukikaiḥ
See *Bhāruci's Commentary on the Manusmṛti*, Vol. I: *The text;* Vol. II: *The translation and notes* (Franz Steiner Verlag GmbH, Wiesbaden, 1975) edited creditably by J. Duncan M. Derrett.

disposition of men should be ascertained by means of external signs, by their voices, their colour of countenance, their motions, their aspects, their eyes and their gestures. Yājñavalkya too while speaking about the nature of false witnesses mentions the signs that are to be the ascertaining factor for a false witness. All these cases clearly speak in favour of the utility and importance of *anumāna*.[47] In the section *strī-saṃgrahaṇa* the utility of *liṅga* has been categorically emphasised by Yājñavalkya.[48] Reference in this context should be

[47] *deśād deśāntaraṃ yāti sṛkkiṇī parileḍhi ca /*
lalāṭaṃ svidyate cāsya mukhaṃ vaivarṇyam eti ca // Yāj. II. 13

pariśuṣyatskhaladvākyo viruddhaṃ bahu bhāṣate /
vākcakṣuḥ pūjayati no tathoṣṭhau nirbhujatyapi // Ibid. II. 14

svabhāvād vikṛtiṃ gacchen manovākkāyakarmabhiḥ /
abhiyoge'tha sākṣye ca duṣṭaḥ sa parikīrtitaḥ // Ibid. II. 15
See here the comments of Vijñāneśvara:
etac ca doṣa sambhāvanāmātram ucyate, na doṣaniścayāya svābhāvikanaimittikavikārayor vivekasya durjñeyatvāt.

[48] *pumān saṃgrahaṇe grāhyaḥ keśākeśi parastriyā /*
sadyo vā kāmajaiś cihnaiḥ pratipattau dvayos tathā // Yāj. II. 283.
Vijñāneśvara comments: *keśākeśikrīḍanabhāvenābhinavaiḥ kararūhadaśanādikṛtavraṇaiḥ rāgakṛtaliṅgaiḥ dvayoḥ saṃpratipattyā vā jñātvā saṃgrahaṇe pravṛtto grahītavyaḥ.*
In this context the statement of Vijñāneśvara regarding inclusion of *bhukti* under ***anumāna*** deserves to be refuted. What he says is this: ***Nanu likhitasya sākṣiṇāṃ ca śabdābhivyaktidvāreṇa śabde'ntarbhāvāt yuktam prāmāṇyaṃ, bhuktes tu kathaṃ prāmāṇyaṃ - ucyate, bhuktir api kaiś cid viśeṣanair yuktā svatvahetubhūtakrayādikam avyabhicārād anumānayanty anupapadyamānā vā kalpayantīty anumāne'rthāpattau vāntarbhavatīti pramāṇam eva.*** (on *Yāj.* II. 22). Aparārka has the same line of approach (p. 628). This view does not appear quite justifiable on the ground that Bṛhaspati in course of his discussion on the respective strength of the *pramāṇas* makes independent mention of both *anumāna* and *bhukti* in:
anumānād varaḥ sākṣī sākṣibhyo likhitaṃ guru /
avyāhatā tripuruṣī bhuktir ebhyo garīyasī // Bṛ.S. VII. 34.

made to the statement of Āpastamba wherein it has been averred that in case of doubt decision in disputes may be arrived at through *liṅga* or ordeal.[49] Āpastamba does not offer any direct clue as to what he likes to mean by *liṅga*, but Haradatta in his *Ujjvalā* commentary explains it as *anumāna*. It is therefore quite evident that as early as Āpastamba the value of *liṅga* or *anumāna* as independent means of proof has been recognised. This shows further that direct evidence and circumstantial evidence went side by side and were regarded as of equal force.

While we pass on to Kauṭilya's *Arthaśāstra* we come across several references to circumstantial evidence. Thus in the section dealing with *daṇḍapāruṣya* it has been held by Kauṭilya that witnesses are to be regarded as authoritative, but if the witnesses are not available the decisive factors would be injury or the indications of the scuffle. Thus Kauṭilya recognises the importance of witnesses and at the same time lends due consideration to circumstantial evidence.[5o] Kauṭilya insists on examin-

48 (cont.)
Reference may also be made of another verse of Bṛhaspati:
anumānaṃ vasaty atra sākṣī cāmaraṇād bhavet /
avyāhataṃ lekhabhogaṃ pramāṇaṃ tu tripauruṣam // Ibid. VII. 35.

49 *sandehe liṅgato daiveneti vicitya. Āpastambadharmasūtra*, II. 11.29.6. (ed. J. Bühler, 3rd edition, Bombay Sanskrit Series, Vol. XLIV, 1932)
Ujjvalā commentary:
te ca nirṇayantaḥ sandehasthaleṣu liṅgato'numānena daivena taptamāsādinā...

5o *pūrvaṃ paścād vābhigatasya sākṣiṇaḥ pramāṇam, asākṣike ghātaḥ kalahopaliṅganaṃ vā. Arthaśāstra* III. 19.21.
Again in the context of deposit (*aupanidhikam*) Kauṭilya has used the term *upaliṅgana* in the following rule: *dravyabhogānām āgamaṃ cāsyānuyuñjīta, tasya cārthasya vyavahāropaliṅganam abhiyoktuś cārthasāmarthyam. Ibid.* III. 12.51. Translation: 'And the judge should question the source of the objects used (by the defendant), and inquire into indications of that object being involved in the transaction, as well as the capacity of the complainant to (own) the object.' We have in the *Arthaśāstra* again reference to *upaliṅgana* in the context of the fee for a harlot: *labheta pumścalī bhogaṃ saṅgamasyopaliṅganāt*. III. 13.37. Translation: A harlot should get a fee in accordance with the indications of union.

ation of the cases through indications (*hetu*).[51] Thus in the section on *Śaṅkārūpakarmābhigraha* (arrest on suspicion, with the stolen article and by indications of the act) Kauṭilya concludes the topic by stating that the magistrate along with the village and divisional officers, should make a search of thieves outside, and the city-super-intendent (should do it) inside the fort, according to the indications mentioned in the section. Again in the section entitled *kanyāprakarma* (violations of maidens) Kauṭilya while speaking on adultery observes that adultery should be understood as committed when there is mutual caressing of the hair or from indications of bodily enjoyment.[52] The idea almost in the same form appears in the text of Nārada, where amongst others reference to *keśākeśi* has been made.[53] Devaṇabhaṭṭa in his *Smṛticandrikā* (p. 221) and Mitramiśra in his *Vīramitrodaya-vyavahāraprakāśa* refer to the statement of Śaṅkhalikhita having almost same idea and expression.[54] Nārada does not categorically recognise *anumāna* or *hetu* as *pramāṇa* but in his directives there are several cases which testify to his acceptance of circumstantial evidence. Thus

[51] *sagopasthāniko bāhyaṃ pradeṣṭā coramārgaṇam /*
kuryān nāgarikaś cāntadurge nirdiṣṭahetubhiḥ // Arthaśāstra IV. 6.2o.
It is of interest to note that in the section - *āśumṛtakaparīkṣā* (inquest on sudden deaths) the directives of Kauṭilya regarding examination of the cases are more or less on the line of circumstantial evidence.
See the section in *A.Ś.* IV. 7.

[52] *keśākeśikaṃ saṃgrahaṇam, upaliṅganād vā śarīrabhogānāṃ tajjātebhyaḥ strīvacanād vā. Arthaśāstra,* IV. 12.35.
See in this context the similarity of approach by Kauṭilya and Yājñavalkya II. 283 for a discussion on which see f.n. 48.

[53] *keśākeśgṛhītaś ca yugapat pāradārikaḥ. Nāradasmṛti* IV. 173.
For other detail in this respect see the discussion that follows in the context of Nārada.

[54] *keśākeśigrahaṇāt pāradārikaḥ, ulkāhasto'gnidaḥ, śāstrapāṇir ghātakaḥ loptrahastaś caura iti.* P. 168.

while speaking about the six different kinds of proceedings where witnesses are not required, it has been held that the wise accept indications of the crime committed as the evidence of witnesses. By way of illustration it has been held that a person carrying a firebrand in his hand is to be regarded as incindiary; one with a weapon in hand a murderer, and where a man and another woman are observed to be in playful mood through grasping of hair mutually, the person is to be taken as adulterer. Several such cases have been mentioned by Nārada in this context.[55] Reference should also be made to other directives of Nārada in connection with the laws of debt in the form of *yuktileśa*. Thus it has been held that in the case where because of negligence of the creditor there is neither any document (executed) nor any witnesses and the opponent denies his being a party to such transaction, three methods are to be adopted.[56] The three methods are: a timely reminder, argument and an oath.[57]

[55] *asākṣipratyayās tv anye ṣaḍvivādā prakīrtitāḥ /*
lakṣaṇāny eva sākṣitve yeṣām āhur manīṣiṇaḥ //

ulkāhasto'gnido jñeyaḥ śastrapāṇis tu ghātakaḥ /
keśākeśigṛhītaś ca yugapat pāradārikaḥ //

kuddālapāṇir vijñeyaḥ setubhettā samīpagaḥ /
tathā kuṭhārapāṇiś ca vanacchetta samīpagaḥ //

pratyakṣicihno vijñeyo daṇḍapāruṣyakṛn naraḥ /
asākṣipratyayāḥ hy ete ..... // IV. 172-175; *N.M.S.* IV. 151-154.

Bhavasvāmī in his commentary explains the true import of the word underlined in the following way:
tatra sākṣiṇaḥ santi, katham tarhi te'sākṣiṇaḥ; lakṣaṇaiḥ cihnaiś te paricchidyante, na darśanaśravaṇānubhavaiḥ. Ato lakṣaṇāny eva sākṣitvaṃ sākṣikāryaṃ kurvantīty arthaḥ. On *N.M.S.* IV. 151.

[56] *pramād dhanino yatra na syāl lekhyaṃ na sākṣiṇaḥ /*
arthaṃ cāpahnute vādī tatroktas trividho vidhiḥ // IV. 235.

[57] *codanāsā-pratikālañ ca yuktileśas tathaiva ca /*
tṛtīyaḥ śapathaḥ proktas tair enaṃ addhayet kramāt // IV. 236.

We have other texts of Nārada which deserve mention in this context.[58] Kātyāyana first speaks of three *pramāṇa*s and in that reference refers to ordeal and *yukti*, the last of which has been described by him as 'the consideration of certain characteristics which cannot be explained otherwise (than on the hypothesis propounded)'.[59] Mitramiśra in his *Vyavahāra-*

57 (cont.)

In the *Smṛticandrikā* as also in the commentary of Bhavasvāmī on the *N.M.S.*, the reading is: *codanāḥ pratikālam* where the two words have been pronounced as separate and this appears relevant while the compounded form explained by Mitramiśra is more or less inappropriate.

According to him: *codanāpratikālasvarūpaṃ tu codanāyā dhanadānādiviṣayakapreraṇayā apratikālo'pratiṣedhaḥ. So'pi yady ayam asya ṛṇādisambandhī na syād yācyamānas enaṃ na nirākuryāt anirākaraṇād asty asyānena sambandha ity arthāpattividhayā'numānavidhayā vā ṛṇādisambandhaṃ sādhayan bhavati pramāṇam iti. Vyavahāraprakāśa*, p. 168.

See here the comments of Bhavasvāmī on *N.M.S.* IV. 212:

*kāle kāle (*here the reading is *pratikalam* as separate*) mahājanasamakṣaṃ codanā dehīti hetus tattvāvagame. bhūyo bhūyo'muṣyāmuṣya sakāśe codito'yam iti vibhāvite sa paricchidyate dhārayatīti. yuktileśaḥ kasyacid ekadeśasya kadācid ādānam amunā preṣitena matsakāśāt gṛhītvāmutrāmutra ca vyayitam iti.*

See also Devaṇabhaṭṭa's interpretation on the same line in his *Smṛticandrikā, Vyavahārakāṇḍa*, p.118.

58 *abhīkṣaṇaṃ codyamāno yaḥ pratihanyān na tadvacaḥ /*
triś catuḥ pañcakṛtvo vā parato'rthaṃ sa dāpayet // IV. 237

An identical text of Kātyāyana should be remembered here:

arthinābhyarthito yas tu vighātaṃ na prayojayet /
tricatuḥpañcakṛtvo vā paratas tad ṛṇī bhavet // Kāt. 336

Nārada has another text:

codanāpratighāte tu yuktileśais tam anviyāt /
deśakālārthasambandhaparimāṇakriyādibhiḥ // IV. 238

Cf. the text of Kātyāyana:

ṛṇe lekhyaṃ sākṣiṇo vā yuktileśādayo'pi vā /
daivikī vā kriyā proktā prajānāṃ hitakāmyayā // Kāt. 233

59 *likhitaṃ sākṣiṇo bhiktiḥ pramāṇaṃ trividhaṃ viduḥ /*
leśoddeśas tu yuktiḥ syād divyānīha viṣādayaḥ // Kāt. 214

Par.Mā., 111, p. 91 reads: *liṅgoddeśas tu ...*

prakāśa makes the meaning of *yukti* clear.[60] Kātyāyana refers to the cases where such *yukti* is to be applied.[61] According to him persons committing crimes in secret and of heinous type should be examined through the means of ordeal or reasoning or gestures or outward manifestations or voice or eye or by movements. Kātyāyana interestingly uses the term *hetu* and read in the light of his verse (no. 214) already referred to, it may be treated as synonymous.[62]

So far as Bṛhaspati is concerned, he is more categorical in his recognition of *anumāna* as a *pramāṇa* by name. Thus in the context of *mānuṣa-pramāṇa* he states that they are three

[60] *leśo'nyathā'nupapanno dharmas tasyoddeśo vimarśo yuktir ity arthaḥ.* *Vy.Pr.*, p. 82.

[61] *guḍhasāhasikādīnāṃ tu prāptaṃ divyaiḥ parīkṣaṇam /*
yukticeṅgitākāravākcakṣuśceṣṭitair nṛṇām // Kāt. 23o.
Mitramiśra reads the word underlined as *yuktileśeṅgitākāra*.
Vy. Pr., p. 84.

[62] Kātyāyana states that in all sorts of dispute the king should ascertain the facts through the employment of *pramāṇas*, the ordeals or by *hetu* (inference):
pramāṇair hetunā vāpi divyenaiva tu niścayam /
sarveṣv eva vivādeṣu sadā kuryān narādhipaḥ // Kāt. 241.
For the words underlined the *Sarasvatīvilāsa* (p. 1o7) has the reading *sarveṣv arthavivādeṣu*, which appears inappropriate in view of the fact that in such a case the scope of such *pramāṇas* becomes restricted. Reference here should made to the means mentioned by Kātyāyana regarding the establishment of claim through indirect proof:
dānaṃ prajñāpanābhedaḥ sampralobhakriyā ca yā /
cittāpanayanaṃ caiva hetavo hi vibhāvakāḥ // Kāt. 337.
Mitramiśra reads *vittāpanayanam* (see *Vy.Pr.* 169).
eṣām anyatamo yatra vādinā bhavito bhavet /
mūlakriyā tu tatra syāt bhāvite vādinihnave // Kāt. 338.
Mitramiśra has explained the significance of each item for which see p. 169 of *Vyavahāraprakāśa*.

namely, witness, document and *anumāna*.[63] Of them witnesses are stated to be of twelve varieties, documents of eight and *anumāna* of three.[64] We do not however come across the names and classifications of the varieties of *anumāna* in the available text of Bṛhaspati. It is intersting that Bṛhaspati in another verse makes mention of *yuktileśa* and the like in ascertainment of the litigation relating to debt.[65] Other verses where references to *anumāna* are made, are noted below.[66]

[63] *dviprakārā kriyā proktā mānuṣī daivikī tathā /*
ekaikā'nekadhā bhinnā ṛṣibhis tattvavedibhiḥ // Bṛ.S. IV. 6.
sākṣilekhyānumānaṃ ca mānuṣī trividhā kriyā. Ibid. IV. 8.

[64] *sākṣī dvādaśa bhedas tu likhitaṃ tv aṣṭadhā smṛtam /*
anumānaṃ tridhā proktaṃ navadhā daivikī kriyā // Ibid. IV. 8-9.
For the underlined word there is as a variant reading *dvividhah* for which see f.n. 3, p. 46 of the *Bṛhaspatismṛti*, ed. K.V.R. Aiyangar. See *Vyavahāranirṇaya* of Varadarāja wherein it has been stated: *bhuktiḥ kaiś cid viśeṣaṇair viśiṣṭā svatvahetuḥ, sā tu krayasākṣilekhyādikam avyabhicārād anumāpayati anupapadyamānā vā kalpayatīty anumānaṃ dvividham iti bhuktir evoktā.* P. 73.

[65] *ṛṇe lekhyaṃ sākṣiṇo vā yuktileśādayo'pi vā /*
daivikī vā kriyā proktā prajānāṃ hitakāmyayā // Ibid. IV. 2o.
It is to be noted here that only in the *Vyavahāramayūkha* this has been attributed to Bṛhaspati, while the digest-writers like Devaṇabhaṭṭa, Mādhava and Pratāparudra speak of it as of Kātyāyana. See Kātyāyana 233 and the notes by Kane in his *Kātyāyanasmṛtisāroddhāra*, p. 32.

[66] *likhite sākṣivāde ca sandigdhir jāyate yadi /*
anumāne ca sambhrānte tatra divyaṃ viśodhanam // Bṛ.S. IV. 17.

cirantanopāṃśukṛte ciranaṣṭeṣu sākṣiṣu /
praduṣṭeṣv anumāneṣu divyaiḥ kāryaṃ visódhayet // Ibid. IV. 21.

aparādhānurūpaś ca daṇḍo'tra parikalpitaḥ /
sākṣilekhyānumānena samyag divyena vā jitaḥ // Ibid. IX. 25.

sākṣilekhyānumānena prakurvan kāryanirṇayam /
vitatyeha yaśo rājā bradhnasyāpnoti viṣṭapam // Ibid. IX. 33.

Reference in this respect is to be made to the texts of Nārada[67] and Kātyāyana.[68]

From the discussion made above in the light of the texts of the writers on *Dharmaśāstra* beginning with Gautama right up to Bṛhaspati, it is clear that willingly or otherwise the ancient legislators directly or indirectly had to lend recognition to circumstantial evidence for which the terms employed by different writers were *anumāna, hetu, tarka* and *yukti*.

The point that should receive our attention at this stage is the appropriateness or otherwise of the application of circumstantial evidence. Nārada rightly points out that some people sometimes come to the level of inflicting wounds and injuries on their own persons by way of accusing others and therefore in such cases special examinations have been prescribed.[69] Kauṭilya points out that there may be cases where, persons having association with persons indulging in illegal and immoral activities are likely to fall victim to the wrong application of inferential mode of proof. The case of Māṇḍavya has been referred to in this context.[7o]

[67] *Nāradasmṛti* IV. 193-196; again in *Caurapratiṣedhaprakaraṇa*, lo-11 (*N. M.S., Prakīrṇaka*, 7o-71).

[68] Kātyāyana 385-386.

[69] *kaś cit kṛtvātmacihnaṃ dveṣāt param upadravet /*
hetvarthagatisāmarthyais tatra yuktaṃ parīkṣanaṃ // IV. 176 (*N.M.S.* 1.155).
For the word underlined we have in the *Smṛticandrikā* the reading: *'yuktihetvarthasambandhaiḥ'. Vy.Kā.*, p. 56. Explanation offered is: *yuktir arthāpattiḥ; hetur anumānam ...*

[7o] *dṛśyate hy acauro'pi coramārge yadṛcchayā saṃnipāte coraveṣaśastrabhāṇḍasāmānyena gṛhyamāṇo dṛṣṭaḥ corabhāṇḍasya upavāsena vā, yathā hi māṇḍavyaḥ karmakleśabhayād acoras corosmīti bruvāṇaḥ. Arthaśāstra* IV. 8.12
His direction in this respect is:
tasmāt samāptakaraṇaṃ niyamayet. Ibid. IV. 8.13
In other words, punishment should be inflicted only in the cases where proof is fully obtained. The case of Māṇḍavya has been recorded in the *Mahābhārata, Ādi*, 63, 92-93, Cr. ed. 57; lol; *Anuśāsana*, 18. 46-5o; *Mārkaṇḍeyapurāṇa*, chap. 16 (where the name referred to is Aṇimāṇḍavya).

Nārada here directs that often truth has the tendency of being veiled under untruth and it is therefore desirable that proper examination of the facts should be made without relying merely on inference.[71] He has in this connection attempted to explain the position with reference to an illustration.[72] It has been contended that even perception turns out to be misleading, which shows that examination of facts is essential.[73] Nārada in this reference states that the nature of *dharma* is very subtle,[74] and the case of Māṇḍavya has been referred to by Nārada.[75] Māṇḍavya's story also finds its place in the text of Bṛhaspati.[76]

[71] *asatyāḥ satyasaṃkāśāḥ satyāś cāsatyasannibhāḥ (darśanāḥ) /*
dṛśyante vividhāḥ bhāvāḥ tasmāt yuktaṃ parīkṣaṇam // 1. 71 (*N.M.S.* 1.62).
For an identical statement of Pitāmaha:
asatyās satyasaṃkāśāḥ satyāś cāsatyasannibhāḥ /
dṛśyante bhrāntijanakās tasmād yuktaṃ parīkṣaṇam //
See *Smṛticandrikā, Vy.Kā.* p.55
See also the text of Bṛhaspati:
asatyāḥ satyasadṛśāḥ satyāś cāsatyasaṃnibhāḥ /
dṛśyante bhrāntijanakās tasmād yuktyā vicārayet // 1. 117.

[72] *talavad dṛśyate vyoma khadyoto havyavāḍ iva /*
na talam vidyate vyomi na khadyote hutāśanaḥ // 1. 72 (*N.M.S.* 1. 62)

[73] *tasmāt pratyakṣadṛṣṭo'pi yuktam arthaḥ parīkṣitum /*
parīkṣya jñāpayann arthān na dharmāt parihīyate // 1. 73 (*N.M.S.* 1. 64)

[74] *sūkṣo'pi bhagavān dharmaḥ parokṣo durvicāraṇaḥ /*
ataḥ pratyakṣamārgeṇa vyavahāragatiṃ nayet // 1. 41 (*N.M.S.* 1. 35 where the reading is a bit different: *sūkṣo'pi balavān dharmo durvicāras tv atīndriyaḥ)*

[75] *yāty acauro'pi cauratvaṃ cauraś cāyāty acauratām /*
acauraś cauratāṃ prāpto māṇḍavyo vyavahārataḥ // 1. 42 (*N.M.S.* 1. 36)

[76] *cauro'cauraḥ sādhv asādhur jāyate vyavahārataḥ /*
yuktiṃ vinā vicāreṇa māṇḍavyaś coratāṃ gataḥ // *Bṛ.S.* 1. 116.
For systematic treatment of circumstantial evidence see,

Caritra variety of *nirṇaya* deserves our attention at this stage. From Kātyāyana we have clear definition of *caritra* to the effect that herein practices are followed either according to the letters of the sacred law or in consonance with the established convention of the country.[77] We have almost an identical definition of *caritra* from Pitāmaha as recorded in the *Smṛticandrikā*.[78] In this context it is quite befitting to refer to the directives of the Śāstrakāras regarding the recognition accorded to the customs and conventions of the country. Manu, while speaking about the sources of *dharma* recognises *sadācāra* along with the *Vedas* and the *Smṛtis*.[79] In another verse Manu speaks of *ācāra* as most authoritative and Yājñavalkya directs the king to recognise and retain the local usages of the country.[8o] Gautama[81] however adds a condi-

76 (cont.)

A. Thakur, *Hindu Law of Evidence*, Calcutta, 1933, pp. 25-32.

P.V. Kane, *History of Dharmaśāstra*, III, pp.354-357.

Wills, *Principles of Circumstantial Evidence* (English and Indian edition combined), seventh edition, pp. 39-48.

77 *yad yad ācaryate yena dharmyam vādharmyam eva vā /*
deśasyācaraṇān nityaṃ caritraṃ tat prakīrtitam // Kāt. 37.

78 *yad yad ācarati śreṣṭho dharmyaṃ vādharmyam eva vā /*
kulādideśācaraṇāc caritraṃ tat prakīrtitam //

grāmagoṣṭhapuraśreṇīsārthasenānivāsinām /
vyavahāraś caritreṇa nirṇetavyo bṛhaspatiḥ // Sm.C., p. 58 quotes the text o Pitāmaha.

79 *vedaḥ smṛtiḥ sadācāraḥ svasya ca priyam ātmanaḥ /*
etac caturvidham āhuḥ sākṣād dharmasya lakṣaṇam // II. 6
See also: *ācāraḥ paramo dharmaḥ śrutyuktaḥ smārta eva ca /*
tasmād asmin sadā yukto nityaṃ syād ātmavān dvijaḥ // M.S. 1. 1o8

8o *yasmin deśe ya ācāro vyavahāraḥ kulasthitiḥ /*
tathaiva paripālyo'sav yadā vaśam upāgataḥ // Y.S. 1. 343.

81 *deśajātikuladharmāś cāmnāyair aviruddhāḥ pramāṇam;*
karṣakavaṇikpaśupālakusīdikāravaḥ sve sve varge;
tebhyaś ca yathādhikāram arthān pratyāhṛtya dharmavyavasthā. G.D.S. 11. 2o-22. We have from Vasiṣṭha also the rule:
deśajātikuladharmān śrutyabhāvād abravīn manuḥ. V.D.S. 1. 17.

tion to the effect that usages of the country may be regarded as authoritative only when they do not go against the directives of the *Śrutis*. There are other texts of Manu emphasizing the importance of local customs and usages.[82] Bṛhaspati pertinently presents the reason that disregard to these customs by the head of the state is likely to incur displeasure of the subjects.[83] We have the directives of Kauṭilya that due recognition should be given in the formulation of the laws of inheritance to the customs.[84]

Kātyāyana distinctly directs the king to administer the state first in accordance with the principles of *Śāstra* and in the absence of any positive direction of the scriptures, to

[82] *pratyahaṃ deśadṛṣṭaiś ca śāstradṛṣṭaiś ca hetubhiḥ /*
aṣṭādaśasu mārgeṣu nibaddhāni pṛthak pṛthak // M.S. VIII. 3.

jātijanapadān dharmān śreṇīdharmāṃś ca dharmavit /
samīkṣya kuladharmāṃś ca svadharmaṃ pratipādayet // Ibid. VIII. 41..
cf: *yasmin deśe pure grāme traividye nagare'pi vā /*
yo yatra vihito dharmas taṃ dharmaṃ na vicārayet // Devala, quoted in the *Smṛticandrikā*, 1, p. 1o.

[83] *pratilomaprasūtānāṃ tathā durganivāsinām /*
deśajātikulādīnāṃ ye dharmās tatpravartitāḥ // Bṛ.S. I. 126.

tathaiva te pālanīyāḥ prajā prakṣubhyate'nyathā /
janāparaktir bhavati balaṃ kośaś naśyati // Ibid. I. 127.
In this reference Bṛhaspati mentions several such customs which are interesting:
uduhyate dākṣiṇātyair mātulasya sutā dvijaiḥ /
madhyadeśe karmakarāḥ śilpinaś ca gavāśanāḥ // Ibid. I. 128.

matsyādāś ca nārāḥ pūrve vyabhicāraratāḥ striyaḥ /
uttare madyapa naryaḥ spṛśyā nṛṇāṃ rajasvalāḥ // Ibid. I. 129.

sahajātāḥ pragṛhṇanti bhrātṛbhāryām abhartṛkām /
anena karmaṇā naite prāyaś-cittadamārhakāḥ // Ibid. I. 13o.

[84] Kauṭilya's directive has special reference to the laws of inheritance:
deśasya jātyāḥ sanghasya dharmo grāmasya vāpi yaḥ /
ucitas tasya tenaiva dāyadharmaṃ prakalpayet // Arthaśāstra III. 7. 4o.

take to the customs and usages of the country.[85] In this context Kātyāyana himself explains the significance of the word *deśadṛṣṭa* and according to him it stands for custom of the country which has a background of being introduced since long time and which is not in opposition to the directives of the *Śāstra* in the line suggested by Gautama as already referred to.[86] Kātyāyana is more methodical and prudent in realising the difficulties that may crop up every now and then if customs are given recognition in deciding tha cases. What he suggests is that people in general should sit together to decide which of the customs are to be accepted as authoritative. The best course then is to put them in writing for record with the royal seal embossed on the same.[87] Once recognition is accorded to the customs it should be the sacred duty of the king to preserve them and to be guided by them in cases of doubts. The king should not reverse them.

[85] *tasmāc chātrāṇusāreṇa rājā kāryāṇi sādhayet /*
vākyābhāve tu sarveśāṃ deśadṛṣṭena sannayet // Kāt. 45.
For different readings see *Kātyāyanasmṛtisāroddhāra*, p. 9, f.n. 45.

[86] *yasya deśasya yo dharmaḥ pravṛttaḥ sārvakālikaḥ /*
śrutismṛtyavirodhena deśadṛṣṭaḥ sa ucyate // Kāt. 46.
Other verses of Kātyāyana deserve reference in this context. While accepting the importance of the customs Kātyāyana quite appropriately states that even by deciding cases in accordance with the customs, the king should make it a point to adopt Śāstric laws in case of dispute or difference:
deśapattanagoṣṭheṣu puragrāmeṣu vāsinām /
teṣāṃ svasamayair dharmaśāstrato'nyeṣu taiḥ saha // Kāt. 47.

[87] *deśasyānumatenaiva vyavasthā yā nirūpitā /*
likhitā tu sadā dhāryā mudritā rājamudrayā // Kāt. 48
śāstravad yatnato rakṣyā tāṃ nirīkṣya vinirṇayet /
naigamasthais tu yat kāryaṃ likhitaṃ yad vyavasthitam // Kāt. 49.
tasmāt tat saṃpravarteta nānyathaiva pravartayet // Kāt. 5o.
pramāṇadeśadṛṣṭaṃ tu yad evam iti niścitam /
apravṛttaṃ kṛtaṃ yatra śrutismṛtyanumoditam /
nānyathā tat punaḥ kāryaṃ nyāyāpetaṃ vivarjayet // Kāt. 51.

In his gloss on the *Manusaṃhitā* Medhātithi refers to several usages of the country which deserve our attention here.[88]

In the light of this discussion and background, the description of *caritra* by Vyāsa is to be understood. According to him *caritra* stands for an established usage of the country.[89]

Bṛhaspati, as already stated, has assigned two characteristics to each of the four *nirṇaya*s (IX.2). In respect of *caritra* one characteristic is in full agreement with what has been defined by Kātyāyana as discussed above. The other mentioned by Bṛhaspati is not very clear.[90] According to him a decision arrived at through the application of inference is

[88] *sā ca vyavasthā dvividhā, sādhāraṇy asādhāraṇī ca. deśabhedāśrayabhedā sāpi dvividhā, aviruddhā viruddhā ca. aviruddhā yathā keṣāñ cid dākṣiṇātyānām aputrā strī bhartary uparate sabhāsthānum upārohati, tam upārūḍhādhikṛtaiḥ parīkṣitā kṛtalakṣaṇā tatkṣaṇāntaraṃ sapiṇḍeṣu ṛkthaṃ labhate. tathodīcāṃ labhyamānāṃ kanyāṃ yācamānāya bhojanaṃ yadi dīyate tata iyāṃ tubhyaṃ dattety anukte'pi pratiśrutā bhavati. viruddhā ca. kvacid deśe vasante dhānyaṃ prayujyate śaradi dviguṇaṃ pratyādīyate. tathānujñātabhoga ādhir dviguṇe'pi tadutthadhane praviṣṭa āmūlahiraṇyadānāt bhujyata eva. eṣā hi 'aśītibhāgaṃ gṛhṇīyāt', kusīdavṛddhir dvaiguṇyaṃ nātyeti viruddhā.* Medhātithi on Manu VIII. 3.

[89] *deśasthitiḥ pūrvakṛtā caritraṃ samudāhṛtam.* Vyāsa, verse 3.

For an illuminating discussion on the point, see the section: 'Custom and Law in Ancient India', included in *Religion, Law and the State in India* by Prof. J.D.M. Derrett, pp. 148-17o.

[90] *anumānena nirṇītaṃ cāritram iti kathyate /*
deśasthityā dvitīyas tu śāstravidbhir udāhṛtaḥ // Br.S. IX. 6.
The second definition is what is recognised by all other writers on law in respect of *carita*, but it cannot be accounted for exactly how a decision passed on the basis of inference (circumstantial evidence) has been termed by Bṛhaspati as *carita*. Bṛhaspati, as already pointed out, recognises *anumāna* as one the three *mānuṣa-pramāṇas*. It may humbly be suggested that when an established usage is made use of in the desision of a case, the adjudicators are expected to be guided by circumstantial evidence so to say,

called *caritra*, and the wise conversant with the śāstric precepts regard the usages of the country as the second variety *caritra*. One may note with interest that the digest-writers hardly attempt to be clear in their expositions in cases like this and the only explanation that may be offered is that they were so much outdistanced from the ancient legislators that when they entered into the field the original meaning of the terms might have been passed into oblivion.

While referring to the accepted view of the *Smṛtikāras* regarding the meaning of the *caritra* variety of decision, Kane refers to the Nasik Inscription in the following way. He says: 'This seems to be the sense of *caritra* in *'phalakevāre charitroti'* occurring in the Nasik Inscription No. 12 in *Ep. Ind.*, Vol. VIII., p. 82. In *prakīrṇaka*, 24 Nār. seems to give the same sense: *'sthityartham pṛthivīpālaiś caritraviṣayāḥ kṛtāḥ.'* (*History of Dharmaśāstra*, III, 26o).

Nārada's definition of *caritra* may at this stage invite our attention here. According to him, the usages attain validity when after proper discernment they are written down for record for future guidance. (*Caritraṃ pustakaraṇe. N.S.*, 1. 11).[91] This is in full agreement with what has been directed by Kātyāyana as already stated.

The fifth variety of *nirṇaya* according to Vyāsa is *śapatha* (oath or ordeal), which has been spoken of by Raghunandana in

9o (cont.)
at least in respect of inferring in any form a *śruti* directive at any stage. It is known that the Mīmāṃsakas recognise the authoritativeness of the *ācāra* by relying on *anumiti* (i.e. presumption of a *śruti* background but for which a custom cannot stand the test of time for long). For a highly scholastic discussion regarding the authoritativeness of the *ācāras* on the basis mainly of the *Śabarabhāṣya* and the *Tantravārtika* see Kane, *History of Dharmaśāstra*, vol. III, p. 841 ff.

91 Bhavasvāmī offers the following explanation of the statement of Nārada: *lekhyena nirṇīyate tac caritram. caritraṃ saṃgrahaḥ puṃsām iti pāṭhāntaram.* On *N.M.S.* 1.11.
Mitramiśra refers and criticises the reading accepted by Caṇḍeśvara thus:

his *Divyatattva* as a decision which may be resorted to even when there is scope for human modes of proof.[92] It should be noted that the first great safeguard which law provides for the ascertainment of truth in ordinary cases consists in requiring all evidences to be given under the sanction of an oath. This imposes strongest obligation upon the conscience of the witness to declare the whole truth that human wisdom can devise; a wilful violation of truth exposes him at once to temporal and to eternal punishment.

Legislators of ancient India recognised the importance of this divine mode of proof and we may trace the utilisation of this variety of decision in the Vedic period.[93] Before mentioning other references to *divya* by the writers on *Dharmaśāstra* it is worthwhile to pursue the interesting line of dis-

91 (cont.)
atra mādhavīye 'caritraṃ tu svīkaraṇe' iti pāṭhaṃ likhitvā deśācāraś caritraṃ tatsvīkāre tad eva nirṇayahetur iti vyākhyātam... caṇḍeśvareṇa tu 'caritraṃ pustakaraṇam' iti paṭhitvā pustaṃ pañjikety arthaḥ. tatkaraṇam adhikaraṇaṃ yasyeti vyākṛtam. tad rūḍhihīnatvād vacanāntarāsambādāc ca heyam. Vyavahāraprakāśa, p. 7.
It is not very easy however to accept the reading recorded in the *Arthaśāstra* of Kauṭilya in the following way:
tatra satye sthito dharmo vyavahāras tu sākṣiṣu /
caritraṃ saṃgrahe puṃsāṃ rājñām ajñā tu śāsanam // III. 1. 14o.
Read in the light of the verse of Nārada (1. 11) this may mean 'the view commonly accepted by men'. The reading however may be taken as doubtful.

92 *mānuṣapramāṇanirṇayasyāpi nirṇāyakaṃ yat tad divyam iti lokaprasiddham. apinā mānuṣapramāṇasattve'pi yatra caiva ghaṭādyaṅgīkāras tatrāpy etad bhavatīti sūcitam. Divyatattva*, p. 574.

93 See *Atharvaveda* II. 12. 8:
ā dadhāmi te padaṃ samiddhe jātavedasi /
agniḥ śarīraṃ veveṣṭavasuṃ vāg api gacchatu //
For a discussion on this *mantra* see *Proceedings of the American Oriental Society*, vol. III, pp. CCXXI-XXVI, where the views of Ludwig, Weber and Zimmer have been referred to and criticised.
The story of Vatsa as recorded in the *Tāṇḍyamahābrāhmaṇa* (14. 6. 6) and

cussion by Medhātithi on the appropriateness of a trial by ordeal.[94] The *prima facie* position has been stated to be that even by appeal to the inanimate objects like fire, water etc. no positive effect can be expected and as such they are supposed to be utilised to frighten the parties. His conclusion is that ordeals may be relied on as one relies on witnesses and other *pramāṇa*s.

93 (cont.)

also referred to in the *Manusaṃhitā* (VIII. 116):
vatsasya hy abhiśaptasya purā bhrātrā yavīyasā /
nāgnir dadāha romāpi satyena jagataḥ spaśaḥ //
may be regarded as the earliest positive reference to decision by ordeal: *vatsaś ca vai medhātithiś ca kāṇvāv āstāṃ, taṃ vatsaṃ medhātithir ākrośad abrāhmaṇo'si śūdrāputra iti. so'bravīt ṛtenāgniṃ vyayāca yataro nau brahmīyāniti. vātsena vatse vyain medhātithena medhātithis tasya na loma ca nauṣat.*
Reference in this context should be made of the *Chāndogya Upaniṣad* wherein we come across the incident of proving the innocence in respect of theft through holding by hand of a heated axe. *Chāndogya*, VI. 16. 1.

94 *manu caurā api na dahyante, sādhavo'pi dahyamānā dṛśyante; tat kathaṃ śapathe āsvāsaḥ ? ucyate, na dṛśyena vyabhicāreṇa vyavastheyam apanetuṃ śakyate, kadācitkatvād vyabhicārasya. pratyakṣādiṣv api pramāṇeṣu dṛśyata eva tādṛśo vyabhicāraḥ. na ca tāni na pramāṇam; atha vyabhicāravanti naiva pratyakṣādiśabdavācyāni yad vyabhicarati na tat pratyakṣam, yat pratyakṣam na tad vyabhicaratīti vacanāt. ihāpi śakyate tad vaktum, yad vyabhicarati nāsau śapatho, yaḥ śapathaḥ sa na vyabhicaratīti. kaḥ punaḥ śapathaḥ, yaḥ samastetikartavyatāmātrādyapagraheṇa nirūpitakuhakaḥ stambhanābhāvaḥ. viparīto'śapathaḥ. na tādṛśasya vyabhicāro'sti. athāpi syāt tatrāpi prākkṛtasya karmaṇaḥ phalavipāko bhavati, nimittatvāt. kṛtāparādhe'pi pūrvakṛtena garīyasā śubhena mucyate, akṛtāparādho janmāntaradoṣeṇa nigṛhyate. vicitrā hi karmaṇāṃ phalapākābhivyaktihetavaḥ, sahasrād eko mithyā gṛhyate, utsarga tas tv amithyātvam. putreṣṭikārīryādiṣv apy etatsamānam. tasmāt śakṣivat śapathe'pi pratyetavyam te'pi kadācin mithyā vadanti. na bhayadarśanamātram etat. ruḍhyā śapathā uktāḥ satyaṃ pratiṣṭhita iti.*
Medhātithi on Manu VIII. 116. Medhātithi is supposed to have before him the commentary of Bhārucī where there is discussion of the same type.

Ordeal as a *pramāṇa* has been recognised in the texts on *Dharmaśāstra* and *Arthaśāstra*. Kauṭilya states that the following are helpful in arriving at decisions in a case. They are: an offence distinctly noticed; voluntary admission (similar to *vādisampratipatti* as mentioned by Vyāsa in verse no.1); straightforwardedness in questions and answers to one's own and the opposite party; reasoning (*hetu* - similar to that mentioned by Vyāsa) and oath.[95]

Other references to oath and ordeal from the *Dharmaśāstra*s are being mentioned here in bare outline.[96]

[95] *dṛṣṭadoṣaḥ svayaṃvādaḥ svapakṣaparapakṣayoḥ /*
anuyogārjavaṃ hetuḥ śapathaścārthasādhakaḥ // A.Ś. III. 1. 46.
See in this context Kauṭilya's provision of penalty for a person putting questions to suspects on oath without authorisation:
śapathavākyānuyogam aniṣṛṭaṃ kurvataḥ... pūrvaḥ sāhasadaṇḍaḥ. A.Ś. III. 2o. 17.

[96] *Āp.Dh.Sū.* II. 11. 29. 6, where *daiva* has been used by name.
Manu VIII. 113-116, where the expression *śapatha* has been used and there is reference to ordeal by fire and water. Nārada however ascribes to Manu five types of *divya:*
Sandigdhe'the'bhiyuktānāṃ pracchanneṣu viśeṣataḥ /
daivaṃ pañcavidhaṃ jñeyam ity āha bhagavān manuḥ // IV. 251.
He himself in the next verse (IV. 252) speaks of five varieties of *divya*, and two more are referred to again in IV. 337 and 343. Yājñavalkya II. 95 also is in favour of five *divyas: tulāgny āpo viṣaṃ kośo divyānīha viśuddhaye*. See also Viṣṇu IX-XIV. Kātyāyana uses both the terms *śapatha* (verse 463) and *divya* and for the latter has elaborate discussion covering verses 411-461. In the context of the *pramāṇas* Kātyāyana refers to *divya* in verses 214, 216-22o; 223-225 etc. Bṛhaspati speaks of nine varieties of *divya: ghaṭādyā dharmajāntā ca daivī navavidhā kriyā*. VIII. 2, verses VIII.3-4. For other elaborate discussion on the nature and technicalities of *divya* see VIII. 5-32. Bṛhaspati speaks of *śapatha* and is of opinion that *śapatha* as distinct from *divya* is to be resorted to in disputes of trifling matters while in serious ones like debt etc. *divya* is the *pramāṇa* to be adopted:
satāṃ vāhanaśastrāṇi gobījakanakāni ca /
devabrāhmaṇapādāś ca putradāraśirāṃsi ca // VIII. 33. Cf. Nārada IV. 248.

Nārada makes mention of both *divya* and *śapatha* thereby emphasising that there is difference between the two[97] Nārada interestingly refers to cases of *śapatha* adopted by the divine and semidivine beings. Thus, Vasiṣṭha took an oath when he was accused of having assumed the shape of an evil spirit. The seven Ṛsis resolutely took an oath together with Indra in order to clear themselves mutually of suspicion when each was suspected by the rest of having taken lotus fibres:

śapathā hy api devānām ṛṣīṇām api ca smṛtāḥ /
Vasiṣṭhaḥ śapathaṃ śepe yātudhānena śaṅkitaḥ // IV. 243

Saptarṣayas tathendreṇa puṣkarārthena śaṅkitāḥ /
Śepuḥ śapatham avyagrāḥ parasparaviśuddhaye // IV. 244

Treatment of trial by ordeal is exhaustive in the texts of Nārada (see verses IV. 247 ff.); Yājñavalkya (II. 96-113; Kātyāyana (verses 411-463); Bṛhaspati (VIII. 1-92) as also in the *nibandha* texts of which the *Divyatattva* of Raghunandana, the *Vyavahāraprakāśa* of Mitramiśra and the *Vyavahāramayūkha* of Nīlakaṇṭha may be of special interest (pp. 169-221).

The text of Vyāsa with reference to *śapatha* should be referred to here. It is stated there oaths and ordeals of different types are to be applied proportionate to the amount of money involved about which dispute has taken place.[98] For cla-

96 (cont.)

ete ca śapathāḥ proktāḥ alpārthe sukarāḥ sadā /
sāhaseṣv abhiśāpeṣu divyāny āhur viśodhanam // VIII. 34.

For other informations on *śapatha* see Bṛhaspati VIII. 35 ff. The idea of Bṛhaspati has been derived from Nārada, who in turn refers to Manu:

ity ete śapathāḥ proktā manunā svalpakāraṇe /
pātakeṣṭābhiyoge ca vidhir divyaḥ prakīrtitaḥ // IV. 25o, also see:
mahāparādhe divyāni dāpayet tu mahīpatiḥ /
alpeṣu tu nṛpaśreṣṭhaḥ śapathaiḥ śrāvayen naram // IV. 249.

97 *yadā sākṣī na vidyeta vivāde vadatāṃ nṛṇām /*
tadā divyaiḥ parīkṣeta śapathaiś ca pṛthagvidhaiḥ // IV. 247

98 *arthānurūpāḥ śapathāḥ smṛtāḥ satyadhaṭādayaḥ*. Vyāsa, verse 3. Quoted in the *Smṛticandrikā, Vy.kā.*, p. 222. (Mysore edition)

rification we may here refer to the text of Yājñavalkya which states about the application of ordeal in terms of dispute relating to money.[99]

Kātyāyana is clear in his statement in this respect. Thus he holds, after ascertaining the price of things (the subjects of dispute) he (the judge) should trace their equivalent in gold and then the proper ordeal should be prescribed.[100] Bṛhaspati also has the same directive to the effect that ordeals are to administered by taking into consideration the time, the place and the amount of money involved.[101]

The reference to *satya* in the expression *satyadhaṭāḍayaḥ* in the verse of Vyāsa (no. 3) may be explained in a better way if the verse of Manu regarding the different modes of oath in respect of different castes is considered. According to this verse a Brāhmaṇa is to undertake an oath in the name of truth[102]

98 (cont.)
Devaṇabhaṭṭa in this context refers to the text of Nārada as having the same implication as that of Vyāsa (p. 222):
yuktiṣv asamarthāsu śapathair eva nirṇayet /
arthakālabalāpekṣam agnyambusukṛtādibhiḥ // N.S. IV. 239.
The reading in the edition of Jolly as also in the *N.M.S.* (215) is different in the words underlined. For *nirṇayet* the reading is *ardayet*; and for *artha°* the reading is *deśa°*. Devaṇa's interpretation of Vyāsa's *arthānurūpam* is as follows:
arthāpekṣaṃ sisādhayiṣitārthālpatvamahattvarūpam ity arthaḥ. (p. 222)

99 *nāsahasrād dharet phālaṃ na viṣaṃ na tulā tathā*. II. 99.

100 *sarvadravyapramāṇaṃ tu jñātvā hema prakalpayet /*
hemapramāṇayuktaṃ tu tadā divyaṃ niyojayet // Kāt. 417.
See in this context other verses of Kātyāyana 418-421.

101 *yasmād devaiḥ prayuktāni duṣkarārthe mahātmabhiḥ /*
aham uddeśatāṃ vacmi sandigdhārthaviśuddhaye //
deśakālārthasaṃkhyābhiḥ prayuktāny anupūrvaśaḥ // Bṛ.S. VIII. 5.
See in this context other verses of Bṛhaspati VIII. 29-32.

102 *satyena śāpayed vipraṃ kṣatriyaṃ vāhanāyudhaiḥ /*
gobījakāñcanair vaiśyaṃ śūdraṃ sarvais tu pātakaiḥ // Manu VIII. 113.

(Bühler: 'Let the judge cause a Brāhmaṇa to swear by his veracity ...'). Nārada also makes mention of *satya* of course without specific mention of the caste of the person making such oath.[1o3] In an earlier verse of course Nārada shares with Manu a verse where there is reference to the castes and the different procedures of oath.[1o4]

While declaring that the different modes of oath are to be administered for different castes, Bṛhaspati almost in the same language prescribes the different formalities.[1o5]

1o2 (cont.)

Medhātithi describes here the nature of *śapatha* and *satya* thus: *nanu yady aham evaṃ kuryāṃ tadidam aniṣṭaṃ āpnuyām iti saṃkīrtanakriyā śapathaḥ... 'satyena śape 'satyādinibandhano'yaṃ, 'dharmo vā me niṣphalaḥ syād'iti.*

1o3 *satyaṃ vāhanaśāstrāṇi gobijakaṇakādi ca /*
devatāpitṛpādāś ca dattāni sukṛtāni ca // IV. 248.

mahāparādhe divyāni dāpayet tu mahīpatiḥ /
alpeṣu tu nṛpaśreṣṭhaḥ śapathaiḥ śrāvayen naram // IV. 249.

1o4 Nārada IV. 199 = Manu VIII. 113. The next verse of Nārada is interesting. According to him, the king should inspire the persons with ancient sacred texts, extolling the excellence of truth, and with the denouncement of the sinfulness of falsehood:
purāṇair dharmavacanaiḥ satyamāhātmyakīrtanaiḥ /
anṛtasyāpavādaiś ca bhṛśam uttrāsayed imān // N.S. IV. 2oo.

1o5 *varṇānurūpaiḥ śapathaiḥ śapanīyaṃ pṛthak pṛthak / Bṛ.S.* VIII. 38.
Bṛ.S. VIII. 36 = Manu VIII. 113.
We may here note that all the oaths were principally imprecatory and the imprecation was in a form 'adapted to the peculiarities of the influences by which each individual might be presumed to be most affected.' Best in his *Evidence* questions the utility of imprecation thus: 'Imprecation is however, no part of the essence of an oath, but is a mere adjunct of questionable propriety as calculated to divert attention from the true meaning of the ceremony and fix it on some external observance.' (p. 45). For a discussion on the point see, A Thakur, *Hindu Law of Evidence*, Calcutta, 1933, 136 ff.

satyadhaṭādayaḥ in the verse of Vyāsa has evidently reference to *satya* (the nature of which was just explained) and others beginning with *dhaṭa*. We should therefore in this context make a passing reference to the number of such ordeals, which have already been indicated in *f.n. 96*. The most common are the ordeals by balance (*tulā* or *dhaṭa*) historical reference to which is available from the Silimpur stone slab inscription of the time of Jayapāladeva at about 12oo A.D. (See *Ep. Ind.*, Vol. XIII, p. 283, at pp. 291-292). The others are ordeal by fire;[1o6] by water;[1o7] by poison; by *kośa* (drinking of holy water); by *taṇḍula* (rice grains); by *taptamāṣa* (heated piece of gold); by *phāla* (ploughshare) and by *dharma* (images or pictures of *dharma*).

The next variety of decision as mentioned by Vyāsa is *nṛpājñā* and *rājājñā*, which is similar to *rājaśāsana* of Nārada

[1o6] Kane in his *History of Dharmaśāstra*, III, 377-8 refers to a Marathi publication entitled '***Vatanpatrem, nivāḍapatrem*** etc.' (pp. 45-56), ed. P. V. Mavjee and D.B. Parasnis (19o9) which contains a document describing in great detail the ordeal of fire in Śake, 1666 Pauṣa bright 11th, Thursday in 1745 A.D. and interestingly the opponent was made to pass a document of victory to the *śodhya* called '*yejitapatra*'. There are other references of ordeals in the same text.

[1o7] Interestingly Devaṇabhaṭṭa records that by his time (12oo-1225 A.D.) the ordeal by water and poison was already out of use:
atra jalaviṣayor utsannānuṣṭhānatvāt tadvidhim anākhyāya kośavidhir ucyate.
Introductory portion of *kośavidhi*, in *Sm.C.*, p. 271. See here Stephens, *History of Criminal Law of England*, vol. 1, p. 73. In p. 3oo of the same text it has been stated that the Assize of Northampton presribed ordeal of water for murder, robbery etc. but ordeals were abolished in England since 1215 A.D.
P.V. Kane in the third volume of his *H.Dh.*, pp. 375-378 has collected epigraphic and other records relating to application of different śāstric modes of ordeals. Other references to the treatment of ordeals may be found in: ***Divyatattva*** of Raghunandana; we should refer here to the critical ed. of the ***Divyatattva*** by Richard W. Lariviere, Delhi, 1981; D.C. Sircar, ***The successors of the Sātavāhanas***, Calcutta, 1939, Appendix, pp. 354-376.

(1.1o) and *nṛpājñā* of Bṛhaspati (IX.1) and *rājaśāsana* of Kātyāyana (verse 38).[1o8]

Nārada speaks of it as an edict which depends on the pleasure of the king.[1o9] Kātyāyana declares that a righteous royal edict is made by the king which is not in conflict with the rules of justice and with the usages of the country.[11o] Here the decision is arrived at by the king by relying on his own intellect.[11oa] Such case has been indicated by Kātyāyana when after observing the usage as opposed to the sacred law, the king overrules the same by his command.[111]

Bṛhaspati, as already pointed out, has two definitions of *rājājñā*, as he has two definitions for each of the *nirṇayas*. According to one of the definitions, a decision based on the edict of the king is ordained for those cases in which no evidence is available.[112] The second variety of royal edict is

1o8 In the absence of the aforesaid *pramāṇas* decision is to be made through royal proclamation:
teṣām abhāve rājājñāṃ nirṇayaṃ tu vidur budhāḥ. Vyāsa, verse 3.

1o9 ... *rājājñāyāṃ tu śāsanam*. Nārada, 1. 11. This has been explained in the commentary of Bhavasvāmī as: *rājñām ājñā rājājñā, tatra sthitaṃ śāsanam. rājña icchā yathā tathājñāsiddhiḥ.*
Asahāya comments here that the suit which has been decided by an edict from the king himself, is superior to all the rest, according to the saying- 'what has been decided in a village, goes to the town; what has been decided in the town, goes before the king. What has been decided by the king, though wrongly decided, cannot be tried anew.'

11o *nyāyaśāstrāvirodhena deśadṛṣṭes tathaiva ca /*
yaṃ dharmaṃ sthāpayed rājā nyāyyaṃ tad rājaśāsanam // Kāt. 38.

11oa Devaṇabhaṭṭa brings out the meaning of the verse of Kātyāyana thus: *mānāntarāviruddho rājabuddhimātraparikalpito nirṇayo rājaśāsanam ity ucyate. Sm.C., Vy.Kā.*, p. 22.

111 *viruddhaṃ nyāyato yat tu caritraṃ kalpyate nṛpaiḥ /*
evaṃ tatra nirasyeta caritraṃ tu nṛpājñayā // Kāt. 42.

112 *pramāṇarahito yas tu rājājñā nirṇayaḥ smṛtaḥ. Br.S.* IX. 7. The reading accepted by Aiyangar (in his ed. of the *Bṛ.S.*) as *pramāṇasamatāyām* appears not to be very happy.

to be applicable when the law-books and the judges are at variance with one another.[113] The contention as contained in both the definitions is that royal intervention in the form of edict can only take place when other *nirṇayas* are not available in any form or when there are differences of opinion on a point. This also at the same time indicates that normally such edicts were not resorted to. Nārada's directive that the *nirṇaya* mentioned later in the list should be treated as superior to one previously named (*uttaraḥ pūrvabādhakaḥ, N.S.*, 1.11) has been discussed by Devaṇabhaṭṭa in his *Smṛticandrikā* (*Vyavahārakāṇḍa*, pp. 23-25).[114]

Kauṭilya in his *Arthaśāstra* has dealt with royal edicts in his section on *Śāsanādhikāra* (II.1o). It is stated that *śāsanas* (edicts) are intended for issuing royal orders (*śāsane śāsanam ity ācakṣate. A.Ś.*, II.1o.1). It has further been stated that the kings principally depend on such edicts in as much as peace and war depend on it (*śāsanapradhānā hi rājānaḥ, tanmūlatvāt sandhivigrahayoḥ*. II.1o.2). Kauṭilya mentions different varieties of *śāsana*.[115]

[113] *śāsrasabhyavirodhena tathānyaḥ parikīrtitaḥ. Bṛ.S.* IX. 7. The reading in the Aiyangar's edition of the *Bṛ.S.*: '*śāstrasabhyāvirodhena caturthaḥ parikīrtitaḥ*' appears to be unhappy as in the first line of the verse. Translation of the verses by Jolly in *S.B.E.*, vol. XXXIII, Oxford, 1889, p. 286 may be stated in support.

[114] See in this context the following verse of Bṛhaspati:
śāstraṃ kevalam āśritya kriyate yatra nirṇayaḥ /
vyavahāraḥ sa vijñeyo dharmas tenāpi bādhyate // 1. 19

deśasthityānumānena naigamenānumatena ca
kriyate nirṇayas tatra vyavahāras tu bādhyate // 1. 2o

vihāya caritācāraṃ yatra kuryāt punar nṛpaḥ /
nirṇayaṃ sā tu rājājñā caritaṃ bādhyate tayā // 1. 21
see also Kātyāyana, verses 39-43.

[115] *prajñāpanājñāparidānalekhas tathā parīhāraniṣṭilekhau /*
prāvṛttikaś ca pratilekha eva sarvatragaś ceti hi śāsanāni // II. 1o. 38

anena vijñāpitam evam āha tad dīyatāṃ ced yadi tattvam asti /
rājñaḥ samīpe varakāram āha prajñāpanaiṣā vividhopadṛṣṭā // II. 1o. 39

While speaking about documents Bṛhaspati makes mention of three kinds - those written by the king, those written in a particular place and those written (by a person) in a particular place.[116] Bṛhaspati speaks of three varieties of royal edicts.[117] Vasiṣṭha classifies the documents under two heads, *laukika* and *rājakīya*,[118] of which the latter has been classified into four groups - *śāsana*, *jayapatra*, *ājñāpatra* and *prajñāpanapatra*.[119]

115 (cont.)

bhartur ājñā bhaved yatra nigrahānugrahau prati /
viśeṣeṇa tu bhṛtyeṣu tad ājñālekhalakṣaṇam // II. lo. 4o

yathārhaguṇasaṃyuktā pūjā yatropalakṣyate /
apy ādhau paridāne vā bhavatas tāv upagrahau // II. lo. 41

jāter viśeṣeṣu pureṣu caiva grāmeṣu deśeṣu ca teṣu teṣu /
anugraho yo nṛpater nirdeśāt tajjñaḥ parīhāraḥ iti vyavasyet // II. lo. 42

nisṛṣṭisthāpanā kāryakāraṇe vacane tathā /
eṣa vācikalekhaḥ syāt bhaven naisṛṣṭiko'pi vā // II. lo. 43

vividhāṃ daivasaṃyuktāṃ tattvajāṃ caiva mānuṣīm /
dvividhāṃ tāṃ vyavasyanti pravṛttiṃ śāsanaṃ prati // II. lo. 44

dṛṣṭvā lekhaṃ yathātattvaṃ tataḥ pratyanubhāṣya ca /
pratilekho bhavet kāryo yathā rājavacas tathā // II. lo. 45

yatreṣvarāṃś ādhikṛtāṃś ca rājā rakṣopakārau pathikārtham āha /
sarvatrago nāma bhavet sa mārge deśe ca sarvatra ca veditavyaḥ // II. lo. 4

116 *rājalekhyaṃ sthānakṛtaṃ svahastalikhitaṃ tathā /*
lekhyaṃ tat trividhaṃ proktaṃ bhinnaṃ tad bahudhā punaḥ // *Bṛ.S.* VI. 4.

117 *saptadhā laukikaṃ lekhyaṃ trividhaṃ rājaśāsanam.* Ibid. VI. 5
These three are: *śāsana*, *jayapatra* and *prasādapatra*. For elaboration see *Bṛ.S.* VI. 2o-29.

118 *laukikaṃ rajākīyaṃ ca lekhyaṃ vidyād dvilakṣaṇam.* Q. in *Sm.C.*,p. 125.
See also the same view of Saṃgrahakāra recorded in *Sm.C.*, p. 125.

119 *śāsanaṃ prathamaṃ jñeyaṃ jayapatraṃ tathāparam /*
ājñāprajñāpanapatraṃ rājakīyaṃ caturvidham // Q. in *Sm.C.*, p. 125.
For fivefold classification see *Sarasvatīvilāsa*, pp. 111 ff. For detailed information relating to documents reference may be made to:

Reference has already been made to *sampratipatti* in the context of our discussion on *dharma*. Some more references are being noted here. The last of the *nirṇayas* recognised by Vyāsa is *vādisampratipatti* (Vyāsa, verse 1) i.e. admission by the person accused. Vyāsa himself in the context of delineating different varieties of *uttara* (reply) defines *sampratipatti* as admission by the accused of the charge levelled against him.[120] In such a case, as is quite evident, the adjudicators are not to be in trouble of demanding other modes of proof and going through the technicalities for the ascertainment of truth, as rightly pointed out by Vijñāneśvara having support from the text of Hārīta.[121] This step helps us to understand Nārada's

119 (cont.)

Yāj. II. 84-94; Nārada IV. 69-75; Kāt. verses 249-312; see also Kane *History of Dharmaśāstra*, III, pp. 3o8-312; specially, A. Thakur, *Hindu Law of Evidence*, pp. 2oo-21o.

120 *sādhyasya satyavacanaṃ pratipattir udāhṛtā*. Vyāsa, verse 24. The same line with identical wordings has been attributed to Kātyāyana by Vijñāneśvara on Yāj., II. 7. See *Kātyāyanasmṛtisāroddhāra*, verse 168. It should be noted in this context that *uttara* has been classified as of four types: *mithyā, saṃpratipatti, pratyavaskandana* and *pūrvanyāya*. See Nārada, II. 4; Kāt. verse 165; Bṛhaspati III. 6. Bṛhaspati has the following definition of *saṃpratipatti* type of reply:
śrutvābhiyogaṃ pratyarthī yadi tat pratipadyate /
sā tu saṃpratipattis tu (°ḥ syāt) śāstravidbhir udāhṛtā // Bṛ.S. III. 18. See also:
anuktvā kāraṇaṃ yatra pakṣaṃ vādī prapadyate /
pratipattis tu sā jñeyā kāraṇaṃ tūttaraṃ pṛthak // Ibid. III. 14.
Devaṇabhaṭṭa refers to a text of Prajāpati for the definition of this *uttatra: asyaiva deyam evaitat nāsadbhāṣitam arthinā /*
iti saṃpratipattyākhyaṃ dvitīyam idam uttaram // Sm.C., Vy.Kā., p. 98.

121 *ataś ca saṃpratipattyuttare sādhyābhāvena bhāṣottaratvādinor dvayor apy arthitvābhāvāt sādhananirdeśa eva nāstīti tāvataiva vyavahāraḥ parisamāpyata iti gamyate*. On Yāj., II. 7. The text of Hārīta has been quoted in support: *prānnyāyakāraṇoktau tu pratyarthī nirdiśet kriyām /*
mithyoktau pūrvavādī tu pratipattau na sā bhavet //

statement relating to the *dharma* variety of *vyavahāra* that *dharma* is based on truth (*satya*) (Nārada 1.11).[122]

From an analysis of the verses of Vyāsa relating to *nirṇaya* it may be stated that in adjustment with the four varieties of *nirṇaya* of Bṛhaspati (1.18), the eight types of *nirṇaya* propounded by Vyāsa (verse 1) may be explained to be practically of four types, of course with the addition of a new one, namely, *hetu*. *Pramāṇa* and *śapatha* of Vyāsa may be stated to be included under *vyavahāra*; and *sampratipatti* under *dharma*. *Caritra* and *nṛpājñā* are directly mentioned both by Bṛhaspati and Vyāsa. *Hetu* or *anumāna* is an additional one, but on this point it may be stated that this has been recognised by all the writers on law in some form or other.

In this context a question connected with *nirṇaya* should be hinted at. Whatever be the decision, it is befitting that it should have a record for future reference. Nārada accordingly states that a *jayapatra* (a document of victory in the suit) should be issued to the victorious party in a particular form.[123] One should note with interest that Varadarāja in his

[122] The text of Kauṭilya is helpful in interpretation where the term used is *svayaṃvāda*: *dṛṣṭadoṣaḥ svayaṃvādaḥ svapakṣaparapakṣayoḥ / anuyogārjavaṃ hetuḥ śapathaś cārthasādhakaḥ // A.Ś.* III. 1. 46

[123] *sabhyair eva jitaḥ paścād rājñā śāsyaḥ svaśāstrataḥ /*
jayāne vāpi deyaṃ syād yathāvaj jayapatrakam // N.S. II. 43.
Bṛhaspati has definition of *jayapatra* as also of the contents of the same in the following lines:
pūrvottarakriyāvādanirṇayānte yadā nṛpaḥ /
pradadyāj jayine lekhyaṃ jayapatram tad ucyate // Br.S. VI. 26

yad vṛttaṃ vyavahāre tu pūrvapakṣottarādikam /
kriyāvadhāraṇopetaṃ jayapatre'khilaṃ likhet // Ibid. VI. 27

sādhayet sādhyam arthaṃ tu catuṣpādanvitaṃ jaye /
rājamudrānvitaṃ caiva jayapatrakam iṣyate // Ibid. VI. 28

anyavādyādihīnebhya itareṣāṃ pradīyate /
vṛttānuvādasaṃsiddhaṃ tac ca syād jayapatrakam // Ibid. VI. 29
We have also from Vyāsa some verses relating to *jayapatra* thus:

123 (cont.)

vyavahārān svayaṃ dṛṣṭvā śrutvā vā prāḍvivākataḥ /
jayapatram tato dayāt parijñānāya pārthivaḥ // Verse 5o

pūrvottarakriyāpādaṃ pramāṇaṃ tatparīkṣaṇam /
nigadaṃ smṛtivākyaṃ ca yathāsabhyaṃ viniścitam //
etat sarvam samasena jayapatre vilikhayet // Verse 51

jaṅgamaṃ sthāvaraṃ yena pramāṇenātmasātkṛtam /
bhāgābhiśāpasandigdhe yaḥ samyag vijayī bhavet /
tasmai rājñā pradātavyam jayapatraṃ suniścitam // Verse 52.

Verse 5o of Vyāsa has also been ascribed to Kātyāyana for which see Kātyāyana's *Smṛtisāroddhāra* (verse 476). Kātyāyana refers in this context to a judgement called technically *paścātkāra*, wherein the prescribed modes of proof are resorted to by the litigant:

anena vidhinā lekhyaṃ paścātkāraṃ vidur budhāḥ /
nirastā tu kriyā yatra pramāṇenaiva vādinā /
paścātkāro bhavet tatra na sarvāsu vidhīyate // Kāt. 264.

Jayapatra, according to Kātyāyana, is issued to those who are'cast off (in their cause) because they aver something other (than that was first stated) and other *hīnavādīs* and which contains a recital of what happened':

anyavādyādihīnebhyaḥ itareṣāṃ pradīyate /
vṛttānuvādasaṃsiddhaṃ tac ca syād jayapatrakam // Kāt. 265.

For an informative discussion on *jayapatra* see the commentary of Vijñāneśvara on *Yājñavalkya* II. 91. For interesting facts relating to documentary evidences of *jayapatras* see Kane, *History of Dharmaśāstra*, III, p. 381 ff. where there are references to Jolly's communication regarding a *jayapatra* in ancient Javanese as recorded in 25 *Calcutta Weekly Notes*, pp. CXLII-III; K.P. Jawaswal's paper in the same Journal in No. 24, pp. CXLIX-CLVI relating to a *jayapatra* granted by the Hindu Court in Mithilā in śake 1716 (1794 A.D.) and in *Journal of the Bihar and Orissa Res. Soc.*, vol. VI, pp. 246-258. These records show that such *jayapatras* conform strictly to the formalities prescribed in the *śāstras*. It is interesting that the judgement was written and signed by the Chief of the Judges, named therein as Sacalamiśra and was addressed to the *dharmādhyakṣas* - the members constituting the assembly, as also to the *paṇḍitas*, seven of whom recorded their *sammati* (concurrence) at the top of the document.

For informations relating to nine such Sanskrit *jayapatras* from the courts

Vyavahāranirṇaya expresses his view that in the case where a dispute is decided by a domestic tribunal a *nirṇaya*-patra* in place of a *jayapatra* is to be issued.[124]

123 (cont.)

of Mithila in the 18th and 19th centuries, see *Journal of the Bihar and Orissa Research Society*, vol. XXVIII, 1942.

Reference here should be made to *hīnapatra*, perhaps a document of defeat, mentioned by Vijñāneśvara (on *Yāj.* II. 91):

yatra tu hīnatā... tatra na jayapatrakam asti, api tu hīnapatrakam eva. tac ca kalantare daṇḍapraptyartham, jayapatraṃ tu prānnyāyavidhisiddhyartham iti viśeṣaḥ.

For more scholastic discussion on the point see: A. Thakur, *Hindu Law of Evidence*, pp. 21o-219.

124 *kulādibhir nirṇaye* jayapatrābhāvāt nirṇayapatram tatra kāryam, prattapatram* (dif. reading: *vṛttapatram) iti yāvat.* p. 85.

For the word *kulādi* see Nārada 1. 7:

kulāni śreṇayaś caiva gaṇaś cādhikṛto nṛpaḥ /
pratiṣṭhā vyavahārāṇāṃ gurv ebhyas tūttarottaram //

List of abbreviations

Arthaśāstra = *A.Ś.*

Bṛhaspatismṛti = *Bṛ.S.*

Gautamadharmasūtra = *G.D.S.*

Kātyāyanasmṛtisāroddhāra = *Kāt.*

Manusmṛti = *M.S.*

Nāradasmṛti = *N.S.*

Nāradīyamanusaṃhitā = *N.M.S.*

Sarasvatīvilāsa = *S.V.*

Smṛticandrikā = *Sm.C.*

Vasiṣṭhadharmaśāstra = *V.D.S.*

Vīramitrodaya, vyavahāraprakāśa = *Vīr.Vy.Pr.*

Yājñavalkyasmṛti = *Y.S.; Yāj.*

Bibliography of texts utilised

Original texts - Smṛtis

Manusmṛti, with the commentary of Medhātithi, ed. G.N. Jha (B.I. Series, Calcutta, 1939).

Manusmṛti, with the commentary of Bhāruci, ed. J.D.M. Derrett, Wiesbaden, 1975.

Yājñavalkyasmṛti, with the comm. of Vijñāneśvara, ed. N.R. Acharya, Bombay, 1949.

Nāradasmṛti, with extracts from *Asahāyabhāṣya*, ed. J. Jolly, (B.I. Series, Calcutta, 1885).

Nāradīyamanusaṃhitā, with the comm. of Bhavasvāmī, ed. K. Sambasiva Sastri, (T.S.S., 1929).

Kātyāyanasmṛtisāroddhāra, ed. P.V. Kane (with English translation and notes), Bombay, 1933.

Bṛhaspatismṛti, ed. K.V.R. Aiyangar, (G.O.S., LXXXV, Baroda, 1941).

Vyāsasmṛti, Vyavahāra chapter, ed. B.K. Ghosh, Calcutta, 1944.

Digests - Nibandhas

Smṛticandrikā by Devaṇabhaṭṭa, *Vyavahārakāṇḍa*, pt. I, ed. L. Srinivasacharya, Mysore, 1914.

Sarasvatīvilāsa, Vyavahārakāṇḍa by Pratāparudra, ed. R. Shama Sastry, Mysore, 1927.

Vīramitrodaya (Vyavahāraprakāśa) by Mitramiśra, ed. V.P. Bhandari, Chowkhamba Sanskrit Series, Benares, 1932, vol. VIII.

Dāyabhāga by Jīmūtavāhana, ed. H. Chatterjee, Calcutta, 1978.

Divyatattva, ed. Richard W. Lariviere, Delhi, 1981.

Vyavahāracintāmaṇi, ed. Ludo Rocher, Gent, 1956.

Vyavahāranirṇaya by Varadarāja, ed. K.V. Rangasvami Aiyangar and A.N. Krishna Aiyangar, Adyar, 1942.

Vyavahāramayūkha by Bhaṭṭa Nīlakaṇṭha, ed. P.V. Kane, Poona, 1926.

Texts other than Dharmaśāstra

Arthaśāstra of Kauṭilya, ed. in two vols. R.P. Kangle (University of Bombay Series, pt. I, 197o; pt. II, 1972), the second part contains English translation and critical notes.

Translation of texts

Translation of the *Nāradasmṛti* and the *Bṛhaspatismṛti* by J. Jolly in the Series of Sacred Books of the East, vol. XXXIII, Oxford, 1889.

J. Duncan M. Derrett, *Bhāruci's Commentary on the Manusmṛti*. Vol. 1: *The Text;* Vol. 2: *The Translation and Notes*, Wiesbaden, 1975.

Secondary sources

J.D.M. Derrett, ***Religion, Law and the State in India,*** London, 1968.
Essays in Classical and Modern Hindu Law, Leiden, 1976.

P.V. Kane, *History of Dharmaśāstra,* vol. I, pt. I, (revised and enlarged edition) Poona, 1968 .

P.V. Kane, *History of Dharmaśāstra,* vol. III, Poona, 1946.

A. Thakur, *Hindu Law of Evidence,* Calcutta, 1933.

H. Chatterjee, *The Law of Debt in Ancient India,* Calcutta, 1971.

D.C. Sircar, *The successors of the Sātavāhanas,* Calcutta, 1939.

KAUṬALYA'S *PIṆḌAKARA* - RECONSIDERED

Bernhard Kölver

I.

1. The *Arthaśāstra* contains a list of various types of 'revenues from the countryside' (2.15.3) which is opened by the term that forms the topic of this paper. Its elucidation is hindered by the fact that this levy in the entire text of the *Arthaśāstra* occurs but in this single instance where the term is not accompanied by an explanation. Hence, translators and commentators had little to go on except for the word itself. The glosses so far offered all depart from the meaning *piṇḍa-* has in contexts that deal with arithmetics: 'sum, total, amount' etc.: we find expressions like "aggregate tax" (Kangle), "lump assessment" (Ghoshal), "die in Bausch und Bogen auferlegte Gesamtsteuer (eines Dorfes)" (Meyer), "Pauschalsteuer, Gesamtumlage" (Breloer). All this goes back to Bhaṭṭasvāmin's gloss, which runs:

> *(a)munā grāmeṇaitāvad dhānyādikaṃ prativarṣaṃ deyam*
> 'The village N. has to give a certain fixed quantity of grain per year'.

"Evidently", says Ghoshal (p. 47), "this refers to the lump assessment upon villages as distinguished from the king's grain share assessed upon the individual cultivators." This is very close to Breloer, in whose opinion this payment had one essential feature to set it off from taxes collected from

[1] This is Kangle's periphrasis of Kauṭalya's *rāṣṭram*.

individual producers: it was due from a group, taken collectively[2].

As it stands, this explanation of course immediately raises the question of who it was that actually had to pay the levy. Obviously, the sum in the last resort had to come from the individual cultivator; a term like 'lump assessment' makes sense only on the supposition of an intermediary agency which, for whichever reason, was obliged to pay. If there was an agent or agency liable to pay this fixed amount, we hear nothing about it - nor about the legal grounds this liability rested upon. This silence is all the more peculiar since, among taxes raised from land, Kauṭalya mentions his *piṇḍakara-* prior to all others, prior even to the *ṣaḍbhāga-* , the proportional tax on the produce of land which formed the backbone of royal finances.

The only things, then, we can say with any certainty, are these: in Kauṭalya's times, the *piṇḍa-* tax was levied side by side with the most common tax upon land, the *ṣaḍbhāga-* , and thus must needs be different from it. Second, it is not a levy that stems from crown lands: for these are listed by separate entry[3].

2. There have been occasional attempts to relate this *piṇḍakara-* to an expression which occurs in certain land grants - and to go by the context alone, this is by no means an unlikely hypothesis. The glosses so far suggested, however, do not appear compatible, nor have inscriptions on the one hand, and Kauṭalya on the other, really been shown to elucidate each other - which is why the identification has been suggested

[2] Breloer p. 319: Trotzdem scheint der Ton nicht so sehr auf der festgelegten Summe zu liegen, als auf der Tatsache, daß in diesem Falle eine Gesamtheit von Haftenden dem Fiskus gegenübersteht, während bei der Teilabgabe der Fiskus sich an den einzelnen Produzenten hält.

[3] See 2.6.3 and 2.15.2 on *sītā*.

with some diffidence[4]. With the assistance, though, of materials to be presented below (I 3), the differences can be reconciled. Hence, it is useful to look at inscriptional texts.

2.1 First, the word *piṇḍa-* is met with in the phrase *viṣayād uddhṛtapiṇḍāḥ*, which is attested in line 11 of the Madhuban plate of Harṣavardhana[5], and line 21 of the Pāṇḍukeśvar plate of Lalitasūradeva[6]. Both are records of donations. The phrase itself is a bahuvrīhi compound, referring to 'villages'. Kielhorn had rendered it by the words "...as pieces taken out of the district (to which they belong)"[7]: *piṇḍa-* apparently being understood in its usual sense of 'lump' etc., and thus not related to the levy mentioned in the *Arthaśāstra*.

2.2 It was again Kielhorn who noted this phrase, as far as the wording goes, bears a certain similarity to a passage from the Khalimpur plate of Dharmapāladeva[8].In lines 55f. of this plate, we read

prativāsibhiḥ kṣetrakaraiś cājñāśravaṇavidheyair bhūtvā samucitakarapiṇḍakādisarvvaprat̤yāyopanayaḥ kārya iti

which Kielhorn translates thus:

> "and the resident cultivators, being ready to obey our commands, should make over (to the donees) the customary taxes, means of subsistence, and all other kinds or revenue."

'Means of subsistence' he understood to mean 'payment in kind', and took the term *piṇḍaka-* to stand for 'the ordinary *bhāga-bhoga*' - the king's share of grain, i.e., the proportional tax which Kauṭalya had named *ṣaḍbhāga-*. On this reading, it is in-

[4] Niyogi, p. 186; Sircar, *Glossary*, s.v.

[5] *Ep. Ind.* 1,73.

[6] *IA.* 25, 177 f. = *Kielhorn Kl. Schr.* 1, 380 ff.

[7] *IA.* 25, 183 = *Kl. Schr.* p. 386.

[8] *Ep. Ind.* 4, 243 ff. = *Kl. Schr.* 1, 368 ff.

deed difficult to reconcile *piṇḍaka-*, as used in the inscription, with Kauṭalya's *piṇḍa-* tax.

Kielhorn's solution, however, has since become doubtful because of a passage in the Ādinārāyaṇa inscription from Thānkot (Nepal), which, in Dhanavajra Vajrācārya's edition, runs as follows (ll. 22 ff.):

> *bhavadbhir ... samucitabhāgabhogakarapiṇḍakadānādibhir upakurvvadbhir ājñāśravaṇavidheyaiḥ sukhaṃ prativastavyam*
> 'being ready to obey our commands, you should live happily, furnishing (the donees) with the customary grain share, the *piṇḍaka-*, gifts, etc.'

Here we have *bhāgabhogakara-* and *piṇḍaka-* side by side - hence, it is impossible one of them should stand for the other. On the other hand, the wordings both of the Thānkoṭ inscription and the Khalimpur plate are very close to each other and plainly stem from the same tradition. There is no justification, then, to ignore one witness when interpreting the other: in all likelihood, the Khalimpur *piṇḍaka-* is not identical with *bhāgabhoga-*, either.

On the strength both of Kauṭalya and of the Thānkoṭ inscription, one would tend to take *piṇḍakādi* in the Khalimpur plate to specify *samucitakara*. The list of 'customary taxes' is thus opened by *piṇḍaka-*, and the initial item of this list is practically identical with the tax that stands first in Kauṭalya[9]. The solution, then, which allows us to reconcile the facts so far con-

[9] In the present state of our knowledge, the relation between the terms ***piṇḍa-*** and ***piṇḍaka-*** has to remain conjectural. Given the date of our sources, it is quite possible they are synonyms. On the other hand, the derivation might well reflect the alteration of purpose that Manu attests to (***vide sub***, II). In that case, ***piṇḍaka-*** could be taken as 'Revenue derived from the ***piṇḍa-*** levy'. - The Śilāhāra inscriptions provide us with the names of two more pairs of levies differentiated the same way: ***padaṇa-/padaṇaka-*** 'a cess for the accommodation of royal servants' (Mirashi,p. 114, note 3); ***deṇā-/deṇaka-*** (ibid., p. 108).

sidered is to take *piṇḍaka-* (Khalimpur) in the sense of Kauṭalya's *piṇḍa-*, while the *bhāgabhoga* (plus other levies) are summarized by means of *°ādi*.

This allows us to connect the Madhuban and Pāṇḍukeśvar plates with the preceding, and thus to dispense with Kielhorn's divergent interpretation. Villages *viṣayād uddhṛtapiṇḍāḥ* on this reading are villages 'the *piṇḍa* (-levy) of which had been removed from the district' - removed, that is, from the list of places which owed the *piṇḍa-* payment to government, this payment being part of the benefits transferred to the grantees.

The question of course is which type of levy lies hidden behind the term.

3. It now appears a collection of Nepalese sale and mortgage documents recently found by Pt. Hemrāj Śākya of Pāṭan (Nepal) is of considerable assistance in the solution of this puzzle. The documents in question stem from the Buddhist monastery in Pāṭan which is called Rudravarṇa-Mahāvihāra in Sanskrit and Oku Bahāl in Newari. They are of the *tamsuk* type, written on oblong strips of palm leaf, in the familiar style. Almost all of them are written in Sanskrit, though the language is often faulty. What makes the collection more valuable than any other that has so far seen the light of the day is its age: the oldest (fragmentary) specimen is dated (Nepāl) Samvat 1o3, i.e. A.D. 983; the first complete text stems from NS 121.

These deeds usually contain a phrase like the following:

> *tasya mūlapiṇḍa ... śrī-Yaṃthala-mahāvihāravastu deya*[10]
> *taṃ mā*[11]

[10] The ***visarga*** is always missing.

[11] Quoted from Hemraj Śākya's No. 3, dated NS 158.

"Its (i.e. that of the field) chief/basic *piṇḍa-* is to be given as property of the Great Monastery named Śrī-Yaṃthala, (viz.) 1 mānika of rice"[12]

Another document is slightly more explicit. No. 20, dated from NS 272, has *tata*[13] *kṣetrasya piṇḍa deya vārṣika ekāda-śamānikaṃ 11*. "Of this field, eleven mānikas per year (monsoon ?) is to be given as *piṇḍa*."

What is being paid usually, though not invariably, is a quantity of grain: among Licchavi Inscriptions[14], there is one where we find a *piṇḍaka-* consisting of *dhānya mā* 14 *pu* 7, where *pu* most probably stands for *(paṇa) pu(rāṇa)*; this is a payment, then, mixed of kind and cash. Ghoshal was of opinion *piṇḍa-* was always paid in cash: we now see the mode of payment is not essential to the nature of the levy.

The documents from Nepal, then, contain one piece of additional information which in my opinion is crucial for the understanding of the levy. This is the fact that it was *a fixed quantity* which the *piṇḍa* levy consisted of. And this quantity apparently was fixed (a) for each plot, and (b) fixed for longish periods of time: as far as mortgages are concerned, the texts very clearly tell us so. For mortgage documents invariably mention the period that a given plot of land is mortgaged for. (This is of course to conform to the usual rule which allows the lender to foreclose a fortnight after the period had expired; lands pledged without the duration being expressly stated perpetually remained the property of their owner.) The mortgage documents again employ the *mūlapiṇḍa* formula, including the note that determines the quantity of grain. This means

[12] I take *taṃ* to stand for *taṇḍula-*. Usually, the documents have *dhā*, for *dhānya-*.

[13] em. *tat*.

[14] No. 125 (Dhanavajra Vajrācārya = Gnoli No. 65), dated from saṃvat 69.

the quantity was fixed for the entire duration of the agreement. The *piṇḍa* levy, we have to conclude, was due independent from the harvest a particular plot yielded: it did not fluctuate, as the *ṣaḍbhāga-* and its variations did, which were calculated on a percentage basis.

The levy apparently had to be paid yearly[15]. It was fixed separately for plots, fields, houses, and gardens. The amounts usually vary within rather wide limits: between one third and two *mānikas* per *ropaṇi*. Since the volume of the *mānika* has not yet been determined, we can only form an approximate idea of the values involved. This does not appear to have been very high: the first item in Dhanavajra's collection of Licchavi Inscriptions, undated, records a donation of two fields, the first of them yielding 45 *mānikas* of grain, the second, 28, which are destined "for feeding the Saṃgha and for worshipping Mahāmuni"[16]. The Anantaliṅgeśvara Inscription, which dates from the eighties of the Mānadeva aera and thus is not too far distant in time from the Rudravarṇa documents, among many payments assigns 40 *mānikas* of grain for the ritual that is to purify the Venerable Lord Lokapāla, 140 *mānikas* of food grain to the ten servants of the god, 300 (or 360) to the female slaves, of which there are twenty [17]. If a servant or a god gets 14 *mānikas*, or 40 *mānikas* are annually spent on a purification ritual,

[15] *varṣam=prati* in Doc. No. 12, from NS 24o. - Others have payment per monsoon.

[16] *saṅghasya bhaktārtthaṃ pūjārtthañ ca mahāmuneḥ kṣetran dattan*, Dhanavajra, p. 2.

[17] This is how Dhanavajra takes *ekataḥ-ekataḥ*, and indeed the amount seems very high if taken as the remuneration of every single individual. - Dhanavajra No. 129, pp. 485 ff. : Kriyākaraṇam bhagavato lokapālasvāminaḥ pāvanārthan dhānyamānikaḥ 40 ... devabhṛtyānān daśānām ekato bhuktikā dhānyāmanikā 140 dāsīnām viṃśatīnām ekato mānikā śatatrayam.

then the sums which the monastery collected as *mūlapiṇḍa* were not very high.

There are, then, at least two types of land tax, which were calculated according to principles fundamentally different from each other. One was the well known percentage of the harvest; the second consisted of a fixed amount levied from a plot irrespective of its annual yield. The latter is called *piṇḍa-* in the Nepalese sources. It would seem this division is again met with in the *Sātavāhana* inscription of Vāsiṭhiputa, which distinguishes between two types of levy to be paid to the king[18]. The second of them is called *meya-* "to be measured": and there can be no doubt Sircar's explanation is correct: this is the share (*bhāga-*) due to the royal court. Since this was calculated on a percentage basis, the produce of the land had to be measured.

Prior to this, the inscription speaks of a levy which is *deya-* "to be given", which, in Sircar's opinion, means "what has to be offered or paid in cash". I fail to see why the mode of payment should be the salient point: when opposed to *meya-*, as it is in this inscription, *deya-* most probably again was the fixed amount which the king obtained from each settlement. Taken in this meaning, the *deya-/meya-* sequence repeats Kauṭalya's *piṇḍakara-/ṣaḍbhāga-*[19].

[18] Sircar *Sel. Inscr.* 202, Karle Inscr. of Vāsiṭhiputa (Burgess/ Bühler, *Arch. Surv. Western India* IV, p. 107, No. 17; Senart, *Ep. Ind.* 7,61 f.). ... ***vāsiṭhiputena somadevena gāmo dato valurakasaṃghasa*** (***valuraka lenasa sakarukaro***) ***sadeyameyo*** "by Somadeva Vāsiṭhiputa, the village was given to the Convent of Valuraka, of the Valuraka cave, ... together with what is to be given and what is to be measured."

[19] There is a piece of evidence which looks as if *deya-* had been on the way to turn into a fiscal term. This is contained in a grant made by the very Dharmapāladeva to whom we owe the Khalimpur grant (vide supra, I, 2.2). His Nālandā copper plate (*Ep. Ind.* 23, pp. 290-292) unfortunately is but imperfectly preserved. In the passage crucial to

4. And if we take the *piṇḍa* tax to consist of a fixed sum, then an apparent incongruity in the sources we have so far considered will resolve itself. The Nepalese documents give us *piṇḍa* levies plot by plot. Bhaṭṭasvāmin tells us the *piṇḍa-* was levied per settlement; the Pāṇḍukeśvar and Madhuban plates finally imply lists of *piṇḍa* income drawn up district by district. The various facts are of course easily reconciled with each other: the difference consists in nothing but various units being added up. Government can of course compile lists referring to areas of various sizes[20]. Their totals - if the fixed amounts that the Rudravarṇa documents testify to are anything to go by - will be constant sums. Once items contained in such lists are granted to donees, their revenue - if included in the grant - passes from government property. In this case, totals have to be adjusted accordingly, and government lists have to be modified[21].

19 (cont.)
our argument, P.N.Bhattacharyya reads // [*prativā*]*sibhiś=c=ājñā-śravaṇa-vi*[*dheyair=bhūtvā*] *samucita-deya-bhā*[*ga-bhoga*]*-kara-hiraṇy-ādi* // .This is very close to the Khalimpur text, which runs ... *samucitakarapiṇḍakādisarvvapratyāyopanayaḥ*. In view of this parallel and of the Vāsiṭhiputa grant, the Nālandā text might well mean 'the customary taxes, (namely: both) those to be given (i.e. the *piṇḍaka-*) and the proportional tax (which is measured); (furthermore,) gold etc.'

20 *ṣaṭṣaṣṭīkaraṇe CII* VI, p. 129 (Cintra Stone Inscription of Aparāditya I, śaka 1059) possibly refers to a district secretariat where such records were kept (see Mirashi, loc. cit., p. 130): *ṣaṭṣaṣṭī* is a customary designation for a Śilāhāra district (*viṣaya-*). On this reading, though, °*karaṇa-* has to be taken in the sense of what these inscriptions usually call *śrīkaraṇa-*,'administration'.

21 The implications are very clear from *CII* VI, No. 30, where one Vyomaśambhu donates a field to Śiva Vyomeśvaradeva 'with the permission of King Aparāditya (*śrī-aparādityadevānumatyā*, lines 7-8). His assent was of course necessary if land formerly subject to taxation was to achieve the status of religious property exempt from tax.

This means Kangle's or Ghoshal's version of Kauṭalya's term ('aggregate tax', 'lump assessment'), though in themselves perfectly feasible glosses for *piṇḍakara-*, probably do not convey the meaning intended.

To sum up what can be gathered about the *piṇḍa* tax:

1. It was different from the proportional tax upon harvests.
2. It consisted of a fixed quantity of grain, or a fixed sum in cash, or either, and was levied from individual plots.
3. It could be included in regal grants to persons or institutions. Land thus exempt could be sold with the exemption apparently persisting unimpaired - which means the exemption was not necessarily confined to the original grantee, but could occasionally be passed on. Such was the case in 10th and 11th century Nepal.
4. In that it consisted of fixed amounts, government, in some regions at least, kept lists of the fixed income accruing. These lists, the inscriptions tell us, were kept on district level - from which fact it seems no risk to infer they were compiled on the basis of lists covering smaller territorial units; Bhaṭṭasvāmin's note tallies with this conclusion.
5. In Kauṭalya's times, this levy did not come from royal domains.

II.

The meaning which hitherto had been attributed to *piṇḍa* thus does not fit the case in a crucial point: 'aggregation' or 'addition' is in no sense a material feature, but at best an administrative by-product. We thus have to look elsewhere for the significance of the word, and the legal grounds the tax rested upon.

As to the latter topic, it is peculiar to note the apparent silence of Dharmaśāstra texts on this point. For if we go by the

evidence sketched in the preceding paragraph, the tax itself was not all that rare; nor does it appear to have been restricted to very narrow limitations in space and time. And after all there is Kauṭalya's summary reference, which does show the levy formed part of recognized Indian administrative tradition.

Now, there is a note in the *Mānavadharmaśāstra* which in opinion both contains a reference to this levy - although in a form somewhat obscured - and allows us to relate it to very old administrative practices. When dealing with local administration and the types of revenue that are to be used to pay for it, Manu says (7.118):

> *yāni rājapradeyāni pratyahaṃ grāmavāsibhiḥ / annapānendhanādīni grāmikas tāny avāpnuyāt //*
> 'What the inhabitants of a village daily have to offer to the king, the headman of a village should receive: food, drink, firewood etc.'

This is a levy, then, which was meant to finance government on the local level. What was important in our present context is that Manu tells us in plain words these levies in kind are (or were) "to be given to the king (*rājapradeyāni*)" - in other words, they were originally meant to support the king, and were at some later stage diverted to pay the village headman, whom in a certain sense one might regard as the locum tenens of the ruler.

Commentaries are slightly more explicit:

> *yāny annapānendhanādīni grāmavāsibhiḥ pratyahaṃ rājñe deyāni na tv abdakaraṃ "dhānyanām aṣṭamo bhāgaḥ"* (Manu 7.130) *ityādikam, tāni grāmādhipatir vṛttyarthaṃ gṛhṇīyāt,*

says Kullūka, 'those (levies:) food, drink, firewood etc. which the villagers should daily give to the king - but not the yearly tax (ordained in 7.130:) 'the eighth part of grain etc.' -, the village headman should take for (his) subsistence.'

In Kullūka's opinion, then, this was a tax due to the king over and above his usual share of the crops - which is precisely the state of things we had suggested to account for Kauṭalya 2,15,3 where the *piṇḍakara-* is levied side by side with the *ṣaḍbhāga-*, the percentage of the harvest. This opinion, though, was not universally held. Medhātithi apparently thinks such administrative expenses should be paid out of the usual income of the state: *annādīni tu dhānyadeḥ ṣaṣṭāṣṭamabhāgādiḥ* 'But food etc. are the sixth (or) eighth part etc. of grain etc.' There were regions, we have to conclude, where this "subsistence levy" had been abolished and where this contribution to the costs of local administration was no longer raised separate from, and in addition to, normal taxation, but was apparently met from the general income of the state.

We thus have a chain of stages following one upon the other. Taking Kauṭalya's term at its face value - which is not saying this was the state of things at the time when Kauṭalya wrote - we can equate his *piṇḍakara-* with Manu's *annapānendhanādīni rājapradeyāni*: the king obtained his livelihood in addition to his usual share in the harvest.

The *MānDhŚ* verse testifies to the next stage: with the emergence of more comprehensive political units, presumably, this subsistence levy went to the local representative of regal authority and was used to finance local administration[22]. This method was not unknown in Brāhmaṇa times where the relation between a ruler and his subjects could be described by means of the image of 'food' (*ādya-* or *anna-*, i.e. the people) being consumed by an 'eater' (*attṛ-*, i.e. the king)[23]: the very wording seems to have persisted. And if the Rudravarṇa

[22] It is hard to say whether it was this alteration in technique and purpose which effected the change in terminology observed in *piṇḍa* → *piṇḍaka-*: see note 9.

[23] Rau § 39, p. 58.

documents show us the king transferring his *mūlapiṇḍa* rights to a monastery, they demonstrate a technique in one respect similar to Manu: the income is in both cases used on the local level.

The Harṣavardhana and Lalitasūradeva grants imply a further step towards centralization: the levies, locally raised, had been compiled in centralized lists, covering an entire district. Lands that had been granted to non-government institutions or individuals had to be removed from such lists, which means government was careful to have the lists kept up to date.

The final stage is the one attested by Medhātithi. His explanation in the last resort is tantamount to declaring Manu's rule obsolete. It shows finances centrally administered, and local administration apparently paid out of the general income of the state. There must have been regions where this development took place fairly early: Manu's rule does not seem to have parallels in other *smṛtis*[24], and again, if our explanation of Kauṭalya's *piṇḍakara-* is correct, both term and tax seem to have passed into oblivion. Again: this is a conclusion which is but of regional validity. In Śilāhāra Inscriptions, we find levies apparently meant to defray the expenses of royal officials while on tour: these had to be raised locally (cf. *padaṇaka-*, and, possibly, *deṇaka-*[25]). And land grants from the same region occasionally note a village is given "together with grass, wood, and water" (*satṛṇakāṣṭhodakopeta-*[26]) - which provision would not make sense unless these were rights that normally rested with

[24] There is no entry in Jha, *Manu-Smṛti*: Notes, pt.3: comparative (Calcutta, 1929).

[25] See *CII* VI, Index, for references.

[26] See e.g., Plates of Mummunirāja, śaka 971, Mirashi No. 15, line 75; Grant of Aparāditya I, śaka 1049, Mirashi No. 20, line 67, etc.

the royal donor, so that a separate stipulation was necessary if they were to be waived. In the present state of our knowledge, one would hardly be justified in asserting there definitely was a historical connection between such stipulations and those that form the subject of the present enquiry. Still, there is the similarity to Manu's *annapānendhanāni*.

III.

With Manu recording a type of levy which in its earliest stage clearly was to pay for the day-to-day subsistence of the king - for this is what 'food, drink, firewood etc.' amounts to - it is no longer difficult to identify the meaning of *piṇḍa* that is attested in Kauṭalya's *piṇḍa* tax.

For in the sense of 'subsistence' the word is attested from old. "A woman who has transgressed (is to be) guarded, but should obtain (her) subsistence" (*strī yāticāriṇī guptā piṇḍaṃ tu labheta*), as Gautama has it[27] - and there can be little doubt this subsistence is to consist but of the barest essentials of life. Elsewhere, when describing the way of life ordained for a man under heavy liabilities, Gautama says:

> "Beyond clothes and subsistences his property should be taken away. For (his) cattle and (his) fire, he should take grass, fuel, and the flowers of creepers and trees as his property, and fruits from unattended (creepers and trees)."[28]

This is the same context again : the offender is reduced to the most modest of circumstances - and in listing what he is to be allowed, the enumeration gives a very precise pic-

[27] *Ānandāśrama-saṃskṛta-granthāvali* 61 : 3,4,35.

[28] Gautama 2,3,24-25 *cailapiṇḍād ūrdhvaṃ svaharaṇam/ gogṅyarthe tṛṇam edhān vīrudvanaspatīnām ca puṣpāṇi svavad ādadīta phalāni cāparivṛtānām/*

ture of the scope of this *piṇḍa-*. The tenor of this injunction of Gautama's, then, and that of Manu appear sufficiently close to each other to warrant their connection. What is due to the king by virtue of *MānDhŚ* 7.118 is devoid of any of the luxuries one would attribute to the royal court, and hence could fittingly be called *piṇḍa-* in the sense attested by Gautama - which is, of course, the meaning so often found in Buddhist texts (*piṇḍa-*, *piṇḍapāta-* etc.).

The *piṇḍakara-*, then, in all probability was a tax meant to support the king. In Manu's times, it was collected by, and transferred to, him whom the *Jātakas* so aptly call the *gāma-bhojaka-*, he who enjoys the village. The wording employed by Manu leads us back to Brāhmaṇa times when relations between the lord and his subjects could be understood and formalized by means of *attṛ- / ādya-(anna-)* metaphor, the idea of the eater and the food[29].

The *piṇḍa* tax would appear to carry on this metaphor at a reduced level, as it were - and it is surely not fortuitous that Kauṭalya, the earliest of sources that speak of the 'subsistence levy', at the same time acquaints us with the proportional tax of one sixth. Diodorus Siculus, whose data on India are taken to stem from Megasthenes, after all does attest to both these types of land revenue: χωρὶς δὲ τῆς μίσθέως τετάρτην εἰς τὸ βασιλικὸν τελοῦσι.

'But apart from rent, they pay one fourth to the royal treasury'[30]. Possibly it was with the introduction of the king's share in the harvest that his right to be 'fed' dwindled to a mere subsistence.

[29] Rau § 25, p. 34 f.

[30] Quoted by Fick, p. 78. - Though the motive of the levy was quite different from 'rent', μίσθωσις is a gloss not altogether misleading if we consider the implications - and the practical realization - of *(grāmāḥ) visayād uddhṛtapiṇḍāḥ*.

BIBLIOGRAPHY

[Arthaśastra.-] *The Kautilīya Arthaśāstra* [ed. and transl. by] R. P. Kangle. 1-2. 2nd. ed. Bombay, 1969 - 72. (*Univ. of Bombay Studies. Sanskrit, Prakrit and Pali.* 1-2.)

- *Das altindische Buch vom Welt- und Staatsleben.* Aus d. Skt. übs. v. J. J. Meyer. Reprint. Graz, 1977.

Bhattacharyya, P. N., "Nalanda plate of Dharmapaladeva", in: *Epigraphia Indica* 23 (1938), pp. 29o - 292.

Breloer, B., *Staatsverwaltung im alten Indien. 1. Finanzverwaltung und Wirtschaftsführung.* Leipzig, 1934. (Kautaliya-Studien. 3.).

Fick, R., *Die soziale Gliederung im nordöstlichen Indien zu Buddhas Zeit.* Kiel, 1897.

Gautama-pranīta-dharmasūtrāni ... *Haradatta-krta-mitāksarā-vrtti-sahitāni.* 4. [ed. Poona] 1966. (*Ānandāśrama-samskrta-granthāvalih.* 61.)

Ghoshal, U. N., *Contributions to the history of the Hindu revenue system.* 2nd ed. Calcutta, 1972.

Gnoli, R., *Nepalese inscriptions in Gupta characters.* 1. Roma, 1956. (*Serie Orientale Roma.* lo.)

Jha, G., *Manu-smrti. Notes. 3: Comparative.* Calcutta, 1929.

Kielhorn, F., "Khalimpur plate of Dharmapaladeve", in: *Epigraphia Indica* 4 (1896), pp. 243 - 254. (Reprint in: *Kleine Schriften,* hrsg. v. W. Rau. Wiesbaden, 1969, pp. 368 - 379.)

- "Pandukesvar plate of Lalitasuradeva", in: *Indian Antiquary* 25 (1896), pp. 177 - 184. (Reprint in: *Kleine Schriften,* hrsg. v. W. Rau. Wiesbaden, 1969, pp. 38o - 387.)

[*Mānavadharmaśāstra.-*] *The Manusmrti with the commentary ... of Kullūka.* ... loth ed. ... by Nārāyan Rām Āchārya. Bombay, 1946.

- *Manusmrtih Medhātithi-bhāsya-samalankrtā.* Calcutta, 1967 - 71. *Gurumandala-granthamālā.* 24.)

Mirashi, V. V., *Inscriptions of the Śilāhāras*. New Delhi, 1977. (*Corpus Inscriptionum Indicarum*. 6.)

Niyogi, P., *Contributions of the economic history of Northern India from the loth to the 12th century A. D.*. Calcutta, 1962.

Rau, W., *Staat und Gesellschaft im alten Indien*. Wiesbaden, 1957.

Sākya, Hemrāj, *Śivadeva-saṃskārita-śrī-Rudravarṇa-mahāvihāra-sthitatā-lapatra-abhilekha*. Lalitpur, 1loo [NS].

Sircar, D. C., *Select inscriptions bearing on Indian history and civilization*. 1. 2nd ed. Calcutta, 1965.

Vajrācārya, Dhanavajra, *Licchavi-kālkā abhilekha*. Kāthmāḍauṃ, 2o3o [V.S.]. (*Nepāl ra eśiyāli adhyayan saṃsthānko aitihāsik sāmagrī mālā*. 6.)

OF SOURCES, COMPENDIA, AND RECASTS: COMPETENT WITNESSES IN THE *VIVĀDĀRṆAVASETU*

Rosane Rocher

The *Vivādārṇavasetu* was the first of the "Sanskrit legal treatises compiled at the instance of the British," which Professor Derrett has described.[1] It was composed in Calcutta in 1773-1775 by a group of eleven pandits commissioned by Governor Warren Hastings. Its English translation, made on a Persian abstract of a Bengali oral rendering, was published by the East India Company in London in 1776 under the title *A Code of Gentoo Laws*. As the first compendium of Hindu law accessible to the West, the *Code* attracted considerable attention. A second, pirated edition appeared in 1777, and a further one in 1781. French and German translations were published in 1778. The book was discussed at length in the major English reviews, and eagerly sought by the likes of Jeremy Bentham and Anquetil-Duperron. It was quoted in Parliament during debates on the judicial system to be applied in Company territories in India, as well as during the impeachment proceedings against Warren Hastings. It was a famous book indeed.[2]

[1] Article first published in the *Zeitschrift für vergleichende Rechtswissenschaft* 63, 1961, pp.72-117; recast under the title "The British as Patrons of the Śāstra," *Religion, Law and the State in India*, pp.225-273.

[2] See Chapter 4 in my biography of the English translator, *Orientalism, Poetry, and the Millennium: The Checkered Life of Nathaniel Brassey Halhed*.

The original Sanskrit text underwent a different fate. The *Vivādārṇavasetu* was not published until more than a century later, and then only in an incomplete, uncritical, and obscure edition by the Śrīveṅkaṭeśvara Press in Bombay in 1888. Not that it was forgotten altogether, for it was copied again and again, and reached every part of India as well as some collections abroad. For the critical edition which I have in preparation,[3] I have located 24 manuscripts of the text, and I know many more to have been in existence - which may still be extant, though efforts to locate them have been unsuccessful. Contrary to its English translation, which achieved fame through the press and the booksellers' trade, the *Vivādārṇavasetu* took its place in the traditional corpus of Sanskrit treatises, copies of which were made individually, and studied, annotated, and compared by generations of pandits. Whereas the *Code of Gentoo Laws* remains known today in the same form it had in 1776, by the preserving yet fossilizing action of the printing press, the original Sanskrit text has grown, and has come to assume different versions in its several manuscript copies.

The section which treats of the competence of witnesses in the chapter on legal procedure offers a good example of such growth. A number of manuscripts give an expanded version of the text. It is immediately apparent that the existence of two different recensions is not an accidental result of the copying process, for the commentary which surrounds the additions has been modified as well, and in a scholarly fashion. Clearly the changes were deliberate, and the work of a learned pandit; they were not caused by the lapses of an inattentive copyist. An analysis of the two versions reveals that the text was expanded, not excised. Not only do the added passages remain somewhat alien to the general thrust of the argument, a comparison of the Sanskrit texts with the

[3] This research has been supported in part by a grant from the Joint Committee on South Asia of the American Council of Learned Societies and Social Science Research Council.

English translation makes plain that the additional passages were introduced at a later time, and were not part of the translated text.

Such a clear determination is not possible in every instance, for the translating sequence from Sanskrit to Bengali to Persian to English has made of the *Code of Gentoo Laws* a very unreliable reflection of the *Vivādārṇavasetu*. Yet, in this particular section, all disputed passages are absent from the English text, which otherwise follows the Sanskrit with an acceptable level of accuracy.

The changes between the original and expanded versions of the text which will be studied in the following pages represent only one among a series of episodes in the gradual construction of a compendium of laws. They are not materially different from the technique the eleven authors of the *Vivādārṇavasetu* had applied when composing their treatise. The *Vivādārṇavasetu* is not a very original work. The pandits had been given the task to prepare a compilation of Hindu laws on the basis of the best authorities available, and that they did. They took earlier treatises and blended them in a new text.

The interest of the *Vivādārṇavasetu* does not lie in any novel or surprising interpretation of the law, but in the evidence it provides on the relative esteem in which earlier authorities were held in Bengal at the very end of the long history of Hindu law, just before its transformation into Anglo-Indian law. Even as the chapters on debts and on deposits were composed by weaving together statements from Caṇḍeśvara's *Vivādaratnākara* and Vācaspati Miśra's *Vivādacintāmaṇi*, and that on inheritance drawn essentially from Jīmūtavāhana's *Dāyabhāga* and Śrīkṛṣṇa Tarkālaṅkāra's *Dāyakramasaṅgraha*, the chapter on procedure has a clearly identifiable source. All but its last section is derived from Raghunandana's *Vyavahāratattva*. Modifications of substance are rare,

and stylistic changes minor.[4] Hence it should prove of interest to note those few instances in which the *Vivādārṇavasetu* fails to follow the *Vyavahāratattva*.

Another distinct set of changes is worth noticing. Besides the modifications which took place between the Sanskrit texts, the *Vyavahāratattva*, the *Vivādārṇavasetu*, and its second recension, a few have occurred in the English translation, which are not attested in any manuscript of the Sanskrit text. These modifications are not such that they can be explained as additions or explanations by the English translator, for they reflect provisions of Hindu law which are well known, though not quoted in any manuscript of the *Vivādārṇavasetu*. They must have been included during the oral rendering which one of the pandits who authored the Sanskrit text gave in Bengali to the Persian scribe. The oral, and hence ever changing commentary is an important part of the scholarly tradition in India, yet is rarely retrievable. It is by chance that it was captured here and rendered in English words. It will be of some value to trace the source of these additional comments, for they represent further parts of the memorized corpus on which a learned pandit could draw without notice.

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As in the *Vyavahāratattva*,[5] the section on witnesses in

[4] Changes might even prove to be fewer if a critical edition of the *Vyavahāratattva* was available, which gives evidence on the readings of other manuscripts. This is the case with the *Vivādacintāmaṇi*, for which variant readings mentioned in the notes to Lakṣmīkānta Jhā's edition are paralleled in the *Vivādārṇavasetu*.

[5] The relevant section in the *Vyavahāratattva* is found on pp.211-215 in the second volume of Raghunandana's *Smṛtitattva*.
Henceforth, the following abbreviations will be used: B - Bṛhaspati / *Code* - *A Code of Gentoo Laws*, quoted according to the 1777 edition, which is most easily available / D - Devala / K - Kātyāyana / M - Manu / N - Nārada / *Setu* - *Vivādārṇavasetu* / *Tattva* - *Vyavahāratattva* / U - Uśanas / Vi. - Viṣṇu / Vy. - Vyāsa / Y - Yajñavalkya.

the *Setu* begins with the etymological explanation of the word *sākṣya* as "seeing with one's own eyes"[M 8.74ab], a definition which is tempered with a further statement according to which anyone who has acquired knowledge of a fact by whatever means, can be a witness [M 8.69ab].

The original version of the *Setu* then follows the *Tattva* in allowing the testimony of non-appointed witnesses [M 8.76]. A number of manuscripts and the Bombay edition, however, introduce a preface which provides a general overview and categorization of witnesses. They describe witnesses as of two kinds, appointed and non-appointed, the appointed witnesses being divided in turn into five types, the non-appointed into six [N 1.149]. The five types of appointed witnesses are then enumerated [N 1.150], and each defined in turn [K 371-375]. The source from which these texts were drawn is clearly identifiable from the comments which accompany them: it is the *Mitākṣarā*'s commentary on Yājñavalkya 2.68. Interestingly the last verse of Kātyāyana, which defines the secondary witness, recurs later in both versions of the *Setu*, and with a different reading. There is thus both redundancy and discrepancy within the second version of the *Setu*. Yet the motivation for the additions is clear: to provide the general layout of categories of witnesses which is lacking both in the *Tattva* and in the original version of the *Setu*.

Following this insertion, the second version coincides again with the first, yet must make a minor adaptation. Whereas the first version could introduce Manu 8.76 as a text by "the same author," the second recension, which has intervening texts by Nārada and Kātyāyana, must reintroduce Manu by name.

After allowing the testimony of non-appointed witnesses without further detail, both the *Tattva* and the *Setu* proceed to describe two types of appointed witnesses: secondary and hidden. With regard to the secondary witness, the *Setu* ne-

glects its definition as one who testifies in lieu of a primary witness who is deceased or absent [Vi. 8.12], which is included in the *Tattva*, but follows the *Tattva* in providing a broader definition [K 375], which both texts identify as a quote from Nārada. Both versions of the *Setu* quote this verse with the reading recorded in the *Tattva*, while the second version had it earlier in the reading given it by the *Mitākṣarā*.

At this point occurs an insertion in the English translation, which has no parallel in manuscripts of the *Setu*. The *Code* (p.109) introduces the provision that any villager, even non-appointed, can serve as a witness in matters of limits and boundaries [B 5.18]. This verse is often quoted in the legal literature, but its immediate source in this case is likely to have been a later section of the *Tattva* [p.219]. The insertion of a non-appointed witness in between two types of appointed witnesses seems to represent an oral remark by the pandit translator, which breaks the normal order of the text. It furthermore introduces the only type in the traditional sixfold division of non-appointed witnesses to be referred to in any text connected with the *Setu*.

After the secondary witness, the original version of the *Setu* as well as the *Tattva* define the hidden witness [K 374]. The second version of the *Setu*, which quoted this verse earlier as part of its general survey of appointed witnesses, deletes it here, and substitutes an incongruous sentence, to the effect that the different types of witnesses are to be described later. This is odd, because that version has already enumerated the different types of appointed witnesses, and will not provide later the list of non-appointed witnesses which might be expected.[6] Here indeed ends the section devoted to the de-

[6] The situation is further complicated by the fact that one manuscript provides here the general lay-out of categories of witnesses which the other representatives of the second recension had earlier. The promise to describe witnesses later is absent in this manuscript.

finitions of several types of witnesses in the *Setu* as well as in the *Tattva*.

The next topic is a detailed discussion of the requirements and disqualifying features for witnesses. Yet, before moving on to this issue, the pandit translator inserted two provisions which are clearly out of context. The remarks that witnesses - and borrowers - should write down a statement for future reference, or, if they cannot write, have it written for them (*Code*, pp.109-110) clearly echo two texts [N 1.167, Vy.1.62] which, in a later section of the *Tattva* (p.219), immediately precede the special provision for limits and boundaries [B 5.18] which the pandit translator had introduced earlier. This reinforces the likelihood that the *Tattva* is the immediate source for the translator's oral additions, as well as for the Sanskrit text.

Both the *Tattva* and the *Setu* begin with the enumeration of incompetent witnesses provided by Nārada: a child, a single person, a woman, a cheat, a relative, and an enemy [N 1.190]. Both texts mitigate it by stating that relatives and others who are known to be truthful may serve as witnesses. This, they observe, is by virtue of another text [M 8.70] to be quoted later. They then proceed to discuss the ban on a single witness. The basic text on this topic is the provision that there is to be a minimum of three law-abiding witnesses, in a verse the second half of which stipulates that witnesses ought to be of the same caste and group as the litigants for whom they testify, but that all can serve for all [Y 2.69]. The second version of the *Setu* expands this quotation with the immediately preceding verse, which lists further qualities expected of witnesses [Y 2.68], together with comments from the *Mitākṣarā*. Both versions join in repeating the *Tattva*'s commentary about the matching of castes and groups, but the second recension reverts to the verse it added with a note to the effect that the high standards required of witnesses will be relaxed in crimes of violence and the like. This is how

the *Mitākṣarā* introduces a subsequent rule of Yājñavalkya [2.72cd], which is not quoted in the *Setu*. Once again the additions occurring in the second version of the *Setu* are directly traceable to the *Mitākṣarā*.

The fact that provisions made at this stage are to be mitigated in cases of violence and in emergency cases was apparently very much in the minds of legal scholars, for this seems to have been the rationale for an addition by the pandit translator as well. The rule that there ought to be at least three law-abiding witnesses is followed in the *Code* (p.110) by the remark that "this order is in the chapter concerning affairs of a long space of time." This seems to echo the provision which relaxes rules in cases of violence and in urgent cases, as opposed to stable actions, such as debts [K 365], which the Sanskrit texts will quote at a later time.

All texts next take up exceptions to the rule that witnesses have to be at least three in number, and quote first the provision according to which even a single witness is allowed if he is accepted by both parties and if he is knowledgeable in the law [Y 2.72ab] or has the required qualities [Vi.8.9]. After mentioning in passing that a learned brahman is barred from serving as a single witness [B 5.1], they proceed further to temper the requirements applicable to single witnesses. Though they state that, optimally, a single witness should have both high qualities and the agreement of both parties, they allow that a single witness need not always have high qualities. It may be enough that he be accepted by both parties and that he be free of greed and the like. Such a chancy witness, though, must be questioned in full court [N 1.192]. A further text is adduced, which requires of a single witness that he be free of greed, while remaining silent about the need that he be knowledgeable in the law [M 8.77]. Both *Tattva* and *Setu* proceed to discuss the variant reading with which it is quoted in the *Vyavahāramātṛkā*, and conclude concurring with Viśvarūpa's opinion that it is not absolutely necessary that a single witness be knowledgeable in the law.

Both *Tattva* and *Setu* then comment on the last quarter of the same text [M 8.77], which alludes to personal features which disqualify persons from serving as witnesses. A list of these features is appended [N 1.159]. The *Tattva* and the first version of the *Setu* immediately mitigate this rule in cases of violence and the like, but the second recension inserts a further enumeration of disqualifying features [Y 2.70-71], with the *Mitākṣarā*'s glosses, and attributes to the *Mitākṣarā* a statement according to which persons who suffer from these disabilities are barred from serving as witnesses, even if they are accepted by both parties.

All texts next proceed to relax all rules applicable to witnesses in the case of violent crimes. Persons otherwise disqualified may testify if they have no connection with the case [U]. Not only is a single witness allowed, it is not even mandatory that he be accepted by both parties. He must then, however, be possessed of high qualities [Vy.1.90]. An explanation of what is understood by violent crimes is appended [N 14.2].

Following the *Tattva*, the *Setu* then allows the testimony of a single witness when no other can be expected to exist: for debts and deposits made in secret, and in the case of the manufacturer of a contested article [K 353-354].

The *Tattva* and the *Setu* take up next the issue of the testing of witnesses. They first quote the provision according to which testing does not occur in cases of theft, violence, verbal and physical harassment, and adultery [Vi.8.6], together with the *Vyavahāramātṛkā*'s interpretation. They add the distinction between stable actions such as cases of debt, in which testing is required, and cases of violence and urgent cases, in which it is not [K 365]. The issue of testing is not mentioned in the English translation, which had however alluded to the distinction between permanent and urgent cases in connection with the minimum number of witnesses required.

Then comes a discussion of persons who are not to serve as witnesses for reasons other than congenital or moral disabilities: learned brahmans, ascetics, religious mendicants, and the elderly [N 1.158]. Devala's definition of the *śrotriya* (learned brahman) is appended. The commentary also notes that the reason why elderly persons are not to testify is that their faculties are diminished, while learned brahmans are exempt because they have better things to do. However, if learned brahmans volunteer as witnesses, their testimony is to be accepted. The rationale for this provision is that another text sets a minimum of two witnesses if they are learned brahmans [B 5.1c], thereby implying that they can be valid witnesses. This text had been quoted earlier as an exception to the acceptability of a single witness. In the English translation the cross reference appears in the opposite way. All texts relative to learned brahmans are subsumed under the rule which first refers to them (*Code*, p.111).

Both the *Tattva* and the *Setu* conclude their observations on the competence of witnesses with quotes without comment. The first requires women to serve as witnesses for women, twice-born for twice-born of the same caste, etc. [M 8.68]. The point of this is not to return to the requirement that witnesses ought to be of the same caste or group as those for whom they testify, which had been mentioned earlier, but to provide an exception to the disqualification of women as witnesses. This is made clear by the following quotes, which allow women, children, and other otherwise incompetent witnesses to testify in crimes committed in such secluded places as interior apartments or forests, and in crimes resulting in loss of life [M 8.69cd-70]. These provisions had been alluded to during the discussion of the first list given of incompetent witnesses [N 1.190]. They are absent in the English translation.

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The preceding pages have shown that the accretions to the *Setu* both in its second recension and in its English translation make of the resulting texts a complex and fluctuating ensemble. It is hoped that two appendices will help the reader through the meandering process of the several modifications to the text. Appendix I provides a table summarizing the place which each *smṛti* quote occupies in each version. Appendix II gives a full translation of the original version of the *Setu*. In conclusion, a few reflections on the motivation of the several authors or additional authors are in order.

For historical reasons, the *Vivādārṇavasetu* must be defined as the compendium of laws which Governor Hastings commissioned eleven pandits to compile in 1773-1775, and which served as the basis for the English *Code of Gentoo Laws*. This is what the critical edition of the text will attempt to reconstruct. In the section on the competence of witnesses, it corresponds to what has been called the original version of the *Setu*. It is original only in terms of historical sequence, however, and contains little that is original in terms of its contents. It was borrowed with negligeable changes from the *Tattva*. The translation provided in appendix can also serve as a near-translation of the corresponding section in the *Tattva*.

With regard to the oral commentary of the pandit translator, it is important to realize that it took place shortly after the composition of the Sanskrit text, and was provided by one of its joint authors. As soon as a chapter was completed, Gaurīkānta, one of the committee of eleven who composed the *Setu*, was charged with the task of explaining its contents in Bengali to a Persian scribe, the Persian version then being immediately translated into English.[7] In these circumstances,

[7] See Rosane Rocher, *Orientalism, Poetry, and the Millennium: The Checkered Life of Nathaniel Brassey Halhed*, pp. 51-54.

it is not surprising that all additions or changes made during Gaurīkānta's oral rendering stem from the same source as the *Setu* itself. All are traceable to the *Tattva*, albeit in a different section of the text than that which provided the foundation for the *Setu*.

The source of the additions made to the text after its translation into English, in what has been called the second recension of the *Setu*, is clearly identifiable as the *Mitākṣarā*. Though this common origin provides some degree of internal consistency between additions, it represents a departure from what had occurred both in the original version of the *Setu* and in the oral additions reflected in the English translation. Whereas the *Tattva* had been the sole source thus far, an alien source was introduced. The rationale for all insertions seems to have been the same. What the pandit sought was not to sharpen the text or modify its conclusions, but to provide more general background. Why he felt there was a need for this, and why he chose the *Mitākṣarā* as the source of his additions is more difficult to ascertain, since we know neither his identity nor the circumstances in which he worked. All we can say for certain is that these changes were made at an early date, at least by 1788, or thirteen years only after the original compilation was completed. Ironically, the second recension is that which is recorded in the two earliest dated manuscripts of the *Setu* which have been located so far. The date of 1788 raises the possibility that this second recension might have been a product, or by-product, of the correction which Sir William Jones charged the same pandit Gaurīkānta to perform on his own copy of the Sanskrit text in that year.[8] The fact that the source of the additions made in the second recension is different from that of the comments Gaurīkānta added during his earlier oral rendering, and from that of the original version of the *Setu*, in the redaction of which he had participated, does not necessarily disqualify him. It could easily be a result of the intervening years of his schol-

[8] Ibid., Chapter 4, note 24.

arly and professional activities as a pandit attached to the British administration. This, however, must remain speculation for the time being, since Jones's manuscript of the *Vivādārṇavasetu* "corrected by one of the Compilers, Gauricanta Pandit" in the same year 1788, has not come to light since it was sold at the auction of Jones's library in 1831. An answer to the question whether the corrections which Gaurīkānta made in Jones's manuscript were restricted to the emendation of copying mistakes, or whether they introduced modifications in the contents, must await the discovery of the manuscript, if it is still extant. At any rate, whether Gaurīkānta himself or some other unknown pandit is responsible for the second recension of the *Setu*, it remains witness that the text was not considered then a closed book. Hindu legal scholarship along traditional lines did not cease with the advent of British courts, and did not shy away from texts which the British authorities had commissioned. The pandits who compiled the *Vivādārṇavasetu* had done so in the traditional way, culling from their usual sources. So did their successors. While the interpretation and application of the law was being changed at the hands of British judges, there were still pandits - some of whom may have been employed as assistants to the British administration - who continued to practise legal scholarship in the ways of old, even on those very recent texts which owed their existence to a foreign initiative.

Appendix I

	Tattva	*Setu 1*	*Setu 2*	*Code*
definition of witness	M 8.74ab M 8.69ab	M 8.74ab M 8.69ab	M 8.74ab M 8.69ab	M 8.74ab M 8.69ab
types of witnesses			N 1.149-150 K 371-375	
non-appointed witnesses	M 8.76	M 8.76	M 8.76	M 8.76
(appointed) secondary witness	→ Vi.8.12			
	K 375	K 375	K 375	K 375
non-appointed villager				B 5.18
(appointed)hidden witness	K 374	K 374		K 374
types of witnesses			N 1.149-150 K 371-375	
written record				N 1.167 Vy.1.62
incompetent witnesses	N 1.190	N 1.190	N 1.190	N 1.190
exception	→ [M 8.70]	→ [M 8.70]	→ [M 8.70]	→ [M 8.70]

mitigation for violent crimes			→ [Y 2.72cd]	→ [K 365] ←
single witness	Y 2.72ab	Y 2.72ab	Y 2.72ab	Y 2.72ab
	Vi.8.9	Vi.8.9	Vi.8.9	Vi.8.9
exception: learned brahman	B 5.1	B 5.1	B 5.1	B 5.1
provisions for learned brahmans				N 1.158
(explanation)				D
single witness	N 1.192	N 1.192	N 1.192	N 1.192
	M 8.77	M 8.77	M 8.77	M 8.77
disqualifications	N 1.159	N 1.159	N 1.159	N 1.159
			Y 2.70-71	
mitigations for violent crimes	U	U	U	U
	Vy.1.90	Vy.1.90	Vy.1.90	Vy.1.90
(explanation)	N 14.2	N 14.2	N 14.2	N 14.2
single witness	K 353-354	K 353-354	K 353-354	K 353-354
testing of witnesses	Vi.8.6	Vi.8.6	Vi.8.6	
	K 365	K 365	K 365	
are not to serve as witnesses	N 1.158	N 1.158	N 1.158	
(explanation)	D	D	D	
yet allowed	B 5.1c	B 5.1c	B 5.1c	
exceptions to incompetence	M 8.68	M 8.68	M 8.68	
	M 8.69cd-70	M 8.69cd-70	M 8.69cd-70	

References in brackets indicate that the text is alluded to, not actually quoted.

Appendix II

Manu defines a witness as follows:

> A testimony derives its validity from seeing with one's own eyes, or hearing (with one's own ears) [M 8.74ab]

These are, however, only examples of means of knowledge generally, because of another text of *Manu*:

> Whoever has any knowledge may testify for parties to a lawsuit [M 8.69ab]

The *same author* also allows non-appointed witnesses:

> When someone, even without being appointed, sees or hears anything, then, if asked, he should tell it as he saw or heard it [M 8.76]

"Without being appointed" means without being enjoined 'be a witness in this case.'

Nārada recognizes also hearing by transmission:

> He who hears, or is made to listen to witnesses discussing their testimony in his presence, is known as secondary [K 375]

The person who hears on his own, or whom a party makes listen to, the words of witnesses discussing their testimony, is a witness known as secondary, on account of his having heard it or having been made to listen to it.

Similarly, the person whom a plaintiff makes listen in concealment to the words of the defendant is a hidden witness. As the *same author* says,

> The person whom a plaintiff makes listen, while remaining hidden, to the clearly expressed words of the defendant, in order to establish his own case, is called a hidden witness [K 374]

This establishes that knowledge about the contents of a case as expressed by either party, acquired by invisible means, is valid testimony.

On (witnesses) *Nārada* says:

> Even for them a child, a single person, a woman, a cheat, a relative, and an enemy are barred. They would state the case otherwise [N 1.190]

Even if the case is a good one, they would say otherwise, falsely. Yet, if relatives and others can be ascertained as truthful because of their

utmost adherence to the law, they too can serve as witnesses. The text of *Manu* [8.70] to be quoted later, which mentions their testimony, refers to this circumstance.

Yājñavalkya:

> Witnesses must be at least three in number, and practising the actions enjoined by *śruti* and *smṛti*. They should be according to group, according to caste, or all for all [Y 2.69]

"According to group" means that a witness should be of the same group as the party for whom he testifies, e.g., women for women, people of low birth for people of low birth. "According to caste" means brahmans for brahmans, kṣatriyas for kṣatriyas. However, if there are no such witnesses, all can serve as witnesses for all, without these distinctions.

Yājñavalkya:

> Even a single witness is allowed if he is accepted by both parties and if he is knowledgeable in the law [Y 2.72ab]

The agreement of both parties and knowledge of the law are features of one and the same person. As *Viṣṇu* says,

> Even one (witness is allowed) if he has the required qualities and if he is accepted by both parties [Vi.8.9]

This is why a single witness is forbidden even in the case of a learned brahman:

> They ought to be nine, seven, five, four, or three. Two learned brahmans are acceptable. Never should a single one be questioned [B 5.1]

That a single witness must have both the required qualities and the agreement of both parties is the primary rule. If no such witness exists, one who only has the agreement of both parties is nevertheless acceptable. Thus also *Nārada:*

> If a witness, though single, is accepted by both parties to a suit and if he is free of faults, he should be questioned in court [N 1.192]

The intention is that, if there is agreement on a person, even on a single one, and if he is known by everyone to be free of greed, theft, and the like, he must be questioned as a witness in the court, because in that case, even if he has feelings of love or enmity, it is possible that he will tell the truth, for fear of disgrace. For the goal of legal proceedings is to determine the truth. *Manu* says this:

> Even a single person can be a witness, if he is free of greed. Women cannot, even if there are many and they are pure, for the minds of women are fickle. Neither can others, if they are tainted with faults [M 8.77]

The reading "a single greedy person cannot be a witness" recorded in the *Vyavahāramātṛkā* is less than ideal: it renders pointless the word "single," since greedy people, if they are many, cannot be witnesses either. Even if we accept its reading, there would be no substantial difference: since the rule refers to "a single person", excluding him (the greedy one) amounts to saying that one who is not greedy can serve as a witness if he is accepted by both parties, without being knowledgeable in the law. This is why the comments by *Viśvarūpa* and others (on Y 2.72ab) state that a single witness must have the agreement of both parties, but not that he must be knowledgeable in the law.

"Faults" means theft and the like. Thus *Nārada*:

> Thieves, persons who have committed crimes of violence, cheats, gamblers, and persons prone to anger should not serve as witnesses. In them there is no truth [N 1.159]

"Gambler" means dice player.

To this *Uśanas* makes an exception:

> A slave, a blind man, a deaf man, a leper, a woman, a child, an old man, etc., even these are considered (competent) witnesses in crimes of violence, if they have no connection (with the case) [U]

"An old man" means one whose senses are diminished. Because of "etc." gamblers and the like (are included).

Even if both parties fail to agree, a single witness is acceptable if he possesses such qualities as pure conduct. Thus *Vyāsa*:

> If a witness is of pure conduct, knowledgeable in the law, and trustworthy, he may constitute a valid means of proof, even though single, particularly in crimes of violence [Vy.1.90]

"Trustworthy" means known for his truthfulness on other occasions.

Nārada enumerates the crimes of violence:

> There are five types of crimes of violence: manslaughter, theft, adul-

tery, and both types of harassment [N 14.2]

"Both types," because it is divided into verbal and physical.

Kātyāyana:

Even a single person should be made to testify about secret debts or deposits; if such (debts or deposits) were solicited, even a single person appointed by a party can serve as a witness [K 353]

In the case of a manufactured article, the very person who manufactured it should be made to ascertain it; even though single, he is recognized as a valid means of proof in a lawsuit [K 354]

"Manufactured article" means fashioned earrings and the like.

Viṣṇu:

In cases of theft, violence, verbal and physical harassment, and adultery, a witness should not be tested [Vi.8.6]

The rationale for saying that witnesses ought not to be tested is that, since crimes of theft, adultery, and the like are committed in secret, it is only by a rare chance that there are witnesses. Their testimony, however, ought to be carefully weighed as to its acceptability or non-acceptability depending on their identity as friends, enemies, etc. (The decision) should not be made on their words alone. So says the *Vyavahāramātṛkā*. It is also why *Kātyāyana* states:

In cases of debt and the like, which are stable actions, witnesses ought to be tested. In cases of violence and in urgent cases, testing is never ordained [K 365]

Nārada states that learned brahmans and the like ought not to be witnesses:

Learned brahmans, ascetics, elderly people, and religious mendicants ought not to be witnesses, because of a text. No reason has been given for this [N 1.158]

Devala defines "a learned brahman" as follows:

A brahman who has studied a Vedic school with its *kalpa*, or the six *Vedāṅgas*, who practises the six duties of the brahman, and who is knowledgeable in the law, is termed a learned brahman [D]

"Because of a text" means because they are listed as such: learned brahmans, etc. There is no other reason for this. They are not to be made

witnesses (1) because of the possibility that they forget other people's affairs since they are totally preoccupied with the performance of their own Vedic duties, and (2) because it would be futile to appoint them witnesses, considering that those who examine the lawsuits will not question them anyhow, for fear that they be cursed by them for being called upon in such unimportant matters as testifying. If, however, they themselves, even though not appointed, volunteer to testify, then they can indeed be witnesses. This is because of the text

> Two learned brahmans are acceptable [B 5.1c]

"Elderly people" should not be witnesses because their senses are diminished.

Manu:

> Women should testify for women, twice-born for like twice-born, virtuous śūdras for śūdras, persons of low birth for persons of low birth [M 8.68]

In crimes committed in interior apartments, or in a forest, or resulting in loss of life [M 8.69cd]

if there are no (competent) witnesses, testimony may be given even by a woman, a child, an elderly man, a pupil, a relative, a slave, or a hired servant [M 8.70]

ĀSEDHA AND *ĀKROŚA* - ARREST IN THE *SARASVATĪVILĀSA*

Richard W. Lariviere

The provisions for arrest in the *smṛti* literature are generally based on the following verses of *Nāradasmṛti* (vv. 47-49 and 51 of the first introductory chapter of Jolly's edition):

vaktavye 'rthe na tiṣṭhantam utkrāmantam ca tadvacaḥ /
āsedhayed vivādārthī yāvad āhvānadarśanam // 47 //

sthānāsedhaḥ kālakṛtaḥ pravāsāt karmaṇas tathā /
caturvidhaḥ syād āsedho nāsiddhas tam vilaṅghayet // 48 //

nadīsaṃtārakāntaradurdeśopaplavādiṣu /
āsiddhas tam parāsedham utkrāman nāparādhnuyāt // 49 //

āsedhakāla āsiddha āsedhaṃ yo vyatikramet /
sa vineyo 'nyathā kurvann āseddhā daṇḍabhāg bhavet // 51 //

The plaintiff in the dispute may arrest, until his appearance in court in response to a summons, one who is absconding when a case is to be presented or who ignores his statements. (47)

Arrest may be of four kinds - with regard to place, time, journey, and acts. One who is arrested may not transgress it. (48)

One who is arrested while crossing a river, while in a forest or unpleasant place, during calamity, etc. would not incur any sin in violating that arrest. (49)

One who is arrested at the proper time and violates the arrest should be punished. He who improperly makes an arrest should be punished. (51)

In almost every discussion of *āsedha* which I have seen in *bhāṣyas*, *nibandhas*, or secondary literature arrest is intended to mean the physical restraint of one of the parties to a lawsuit. This is not the case in the *Sarasvatīvilāsa*. In this text the idea of arrest is redefined in a most pragmatic way - one should not arrest a *man*, but one should arrest (or attach) his *profits*.[1]

Commenting on verse 47 of *Nārada* the *Sarasvatīvilāsa*[2] says:

> *etadvyākhyātaṃ* Candrikākāreṇa:[3]
> *"saṃdigdhārthanirṇaya udāsīnaṃ 'tan nirṇayāya pravartitavyam' ity ādi cārthino vacanam avamanyamānaṃ pratyarthinam svayaṃ cārthī āsedhayet. rājājñayā vyavahāradarśanaparyantaṃ nirodhayet."*

[1] Prof. Derrett, in an extremely helpful article entitled "*Kuttā:* a class of Land-Tenures in South India" *BSOAS* XXI, 1958, pp. 61-81 (also in his *Essays in Classical and Modern Hindu Law*, volume I, Leiden, 1976, pp. 28o-3o2), has treated one of the passages of the *Sarasvatīvilāsa* with which I shall deal here. His discussion was confined to the description of the *kuttā*, however, and he did not discuss the unique view of arrest expounded in the passage immediately preceding and following those which mention *kuttā*.

[2] This passage occurs on pages 16o-161 of the edition of R. Shama Shastry published in the University of Mysore Sanskrit Series No. 71, Mysore, 1927. As anyone who has attempted to use this edition knows, a new, critical edition is needed. There is such an edition being prepared by Dr. Susan Oleksiw.

For a discussion of the authorship and date of this 16th century work see P.V. Kane, *History of Dharmaśāstra*, volume I part II, second edition, Poona, 1975, pp. 869-879.

[3] This discussion by the author of the *Smṛticandrikā*, Devaṇabhaṭṭa, is found on page 67 of volume III part I of the edition of L. Srinivasacharya, work no. 45 in the Bibliotheca Sanskrita, Mysore, 1914.

iti svarūpāsedhanam uktam. tat tu "pratyarthigṛhītapraty - arpaṇīyadravyadvārā sa evāsedhyata" iti svarūpāsedhamātra-paraṃ veditavyam.

Bhārucis[4] *tu:*

"vaktavye 'rthe na tiṣṭhantam utkrāmantam ca tadvacaḥ / āsedhayed vivādārthī vādī tatprativādinam // siṣādhayiṣitārthaviṣaya āsedhayet tadgṛhītaṃ svaṃ siṣādha-yiṣitārthaṃ rājājñayāvarodhayet. tadabhāve tadgrahītāraṃ tannāśakaṃ vāvarodhayed."

iti. mukhyapravṛttyā dravyāsedhaparam idam vacanam ity āha. ato Bhārucivyākhyānam *eva samyak.* Viṣṇuvacanānurodhitvāt. *nanv evam ayuktaṃ* Viṣṇuvacanānurodhābhāvāt.

tathā ca Viṣṇuḥ:[5]

"Āseddhuḥ phalam evāsedhya" iti.

maivam. bhavatā vaiṣṇavavacanatātparyāparijñānāt. tat tāt-paryaṃ tu likhitāsedhāt phalāsedhanaṃ balavat. sarveṣāṃ phalārtham eva pravṛtteḥ. phalāsedhanākāraṇe tatpūrvakṛtā likhitādyāsedhā aprayojakā eveti tatprābalyajñāpanārthāt tadvacanasyeti.

This may be translated as follows:

This is explained by the author of the *Candrikā*:
"In the settlement of a doubtful matter, the plaintiff himself should arrest the respondent who is indifferent to and contemptful of such statements of the plaintiff as 'This should be undertaken in order to reach a settlement.' He should detain him under the king's order until his appearance in the legal proceeding."
This is called arresting the corpus, but this should be understood to be intended only for the arrest of the cor-

4 This quotation form Bhāruci is not found in his *Manuśāstravivaraṇa* as ed. by Prof. Derrett, Wiesbaden, 1975. This verse is apparently a quotation of *Nārada* 1.47 but the reading of *pāda* d is unique.

5 This is the only place in all of the known *smṛti* literature where this Viṣṇu quotation occurs.

pus in this sense - *he* is arrested by means of the material which has been taken by the respondent and is to be recovered.

Yet *Bhāruci* says:

"The accuser-plaintiff in the dispute may arrest that respondent who is absconding when a case is to be presented or who ignores his statements. 'He may arrest' applies to the matter which is intended to be proved. He should apprehend, under the king's order, that thing which is intended to be proved to be his own and which has been taken by the defendant. If that is not possible, he should apprehend the one who took it or who destroyed it."

He is saying that this statement (*Nārada* 1.47) has as its purpose the attachment of materials as the first recourse. Thus *Bhāruci*'s explanation alone is correct, because it agrees with the statement of *Viṣṇu*.

(Objection) It is incorrect because it does not agree with the statement of *Viṣṇu*. *Viṣṇu* says:

He should be arrested only (by means of) the profit which belongs to the arrestor.

(Reply) Not so, because you, sir, do not have a thorough understanding of the intent of the statement of *Viṣṇu*; and that intent is that arrest of the profit is more effective than arrest by document[6] because all transactions are undertaken merely for the sake of profit, and this statement has as its purpose the expounding of this greater effec-

6 "Arrest by document" (*likhitāsedha*) means a document bearing the king's seal ordering the appearance of the respondent to answer the charges set forth in the preliminary hearing. This is the order (*rājājñā*) enabling the plaintiff to arrest the respondent until his appearance at the trial. Kātyāyana in *Smṛticandrikā* , page 72:

evaṃ pṛṣṭas sa yad brūyāt tat sabhyair brāhmaṇais saha /
vimṛśya kāryaṃ nyāyyaṃ ced āhvānārtham ataḥ param //
mudrāṃ vā nikṣipet tasmin puruṣaṃ vā samādiśet /

tiveness, namely - when an arrest of the profits has been made, previous arrests by documents, etc. are quite useless.

So, it is clear that the *Sarasvatīvilāsa* has changed the original advice about arrest found in the *Nāradasmṛti*. One is not to waste time confining an individual to a certain place, time, action, etc., (these more common modes of arrest are barely mentioned in the *Sarasvatīvilāsa* - page 76) but one should go directly to the heart of the matter and confiscate the profits (*phala*) that the man may have. He gives an example of how this would work by citing an instance of the land-tenure called *kuttā*. This unique South Indian phenomenon has been treated at length by Prof. Derrett,[7] so here it will be enough to simply recount that under this sort of tenure a man who owns a plot of land and who has no competent heirs can mortgage the land to another on condition that the expenses, debts, and funerary rituals of the owner be paid for by the tenant who may then keep any excess profits. Neither of them may alienate the land individually. If a suit were to be brought against the tenant, the land from which he derives his income cannot be attached nor can that portion of the income which belongs to the owner for his living expenses, etc. be attached since neither belongs to the tenant - only the profit from this arrangement may be used to settle any claims against the tenant. It is this profit which the plaintiff is directed to arrest or attach.

The plaintiff is directed to do this because it is more effective (*balavat*); that is, it is more effective in assuring the appearance of the respondent at the trial. Under the circumstances described above in the example of the *kuttā*, the attachment of his profits might even compel him to seek a quick resolution to the dispute - conceivably, without any trial. The respondent would be in a position of having continued liabilities to the owner of the land without any profit to himself, a situation which it would be desirable to resolve quickly. This would be far more effective than arresting the respondent

[7] Op. cit.

himself. That sort of arrest (*svarūpāsedha*)[8] was, no doubt, an enormous inconvenience and expense for the plaintiff which could be more damaging to him than to the respondent. Any dispute over a debt, for example, which was actually settled in the king's court had to be paid for by both parties.[9] This penalty, apparently intended to discourage use of the courts for mere collection of debts, could be avoided as long as the case was not brought to trial, and it is quite feasible that a recalcitrant debtor, having had his profits attached and yet continuing to be liable for other expenses, might be willing to finally settle the debt rather than prolong the period of no profit and compound the liability further by insisting on a trial. The courts were intended by the *smṛtikāra*s to be places where real disputes were settled and they were not to function as collection agencies.

Attachment of profits would involve the forcible removal of the respondent's property by the plaintiff. The more common understanding of arrest would require the use or threat of

8 The use of the term *svarūpāsedha* is slightly ambiguous in the *Sarasvatī-vilāsa*. As we have seen above it means the arrest of the corpus - in this case the respondent. A few lines later it quotes a "*nibandhakāra*" who says in part: *evaṃ sarveṣu vyavahāreṣu phalasvīkāradaśāyām āsedhaḥ kartavya iti*, and this is explained: *phalasvīkāradaśāyāṃ phalam evāsedhyaṃ na svarūpam iti tātparyam*. Here the context leads one to the following translation (differing slightly from Prof. Derrett's, op. cit., p.291):

> "Thus in every legal proceeding arrest should be made under the conditions of the agreement about the profits."
> "Under the conditions of the agreement about the profits" means the profits alone should be attached, not the corpus (in this case the corpus means the gross income from the *kuttā* tenanya).

9 *Viṣṇusmṛti* 6.2o-21 edited by Pandit V. Krishnamacharya, Adyar Lib. Series, volume 93, Adyar, 1964, pp. 175-176: *uttamarṇaś ced rājānam iyāt tadvibhāvito 'dhamarṇo rājñe dhanadaśabhāgasaṃmitaṃ daṇḍaṃ dadyāt*. 6.2o
prāptārthaś cottamarṇo viṃśatitamam aṃśam. 6.21
The debtor pays ten per cent to the king as a penalty and the creditor pays five per cent. See also the same rule at *Yājñavalkya* 2.42.

force in an even more dramatic way to physically confine the respondent in one way or another. Kohler[10] had suggested that arrest as described by *Nārada* is a form of self-help which has survived from an earlier era in the development of Hindu law. This is not so if the *nibandhakāras* are to be believed. There is no self-help involved. The plaintiff is directed by the texts to make the arrest by himself, but in every instance he does so only under the king's order (*rājājñā*). The plaintiff is not being exhorted to take the initiative to confiscate what is owed him or to punish the alleged offender. He is acting as the king's proxy. Vijñāneśvara makes it quite clear in his comment on *Yājñavalkya* 2.5 that the first thing the plaintiff must do is to present his case to the king, who, if the case as presented so merits, will then issue an order under his seal for the summons of the respondent.[11] This summons and seal is the authority under which the plaintiff acts. Indeed, Kamalākarabhaṭṭa in the *Vivādatāṇḍava* [12] glosses *āsedha* with the term *rājaśapatha* which I would translate as "indictment". It seems then, that all the actions taken in the process of an arrest are done under the king's authority alone. Arrest must have been costly and troublesome, and there is plenty of evidence from other feudal societies that the arrest of a respondent was often left to the wealthy and powerful members of the society who had the means at their disposal to effect an arrest.[13] The nuisance of keeping a man under arrest was one

[10] J. Kohler, *Altindisches Prozessrecht*, Stuttgart, 1891, p. 10.

[11] The questions to be asked by the king in this preliminary hearing are given at *Kātyāyana* 86-87 (Kane's reconstruction, Poona, no date):

kāle kāryārthinaṃ pṛcchet praṇataṃ puratah sthitam /
kiṃ kāryaṃ kā ca te pīḍā mā bhaiṣīr brūhi mānava // 86

kena kasmin kadā kasmāt pṛcched evaṃ sabhāgatah / 87 ab

[12] Page 43 of M.N. Dvivedi's edition, Baroda, 1901.

[13] See, for example, F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, volume II, second edition, Cambridge, 1968, pp. 582-586.

which the king simply wished to avoid where possible.[14] The charge that *āsedha* is a remnant of self-help is further allayed by Vācaspati Miśra's explanation of the rule which states that the subject matter of a law suit, when it has been seized, should be returned (once the trial begins) to the respondent if he is trustworthy, or, if he is not, then it should be placed in the hands of a receiver.[15] Thus the attachment of profits advocated by the *Sarasvatīvilāsa* would not be for direct compensation for the plaintiff, but would be in the plaintiff's hands only until the respondent's appearance at the trial (*vyavahāradarśanaparyantam*).

The whole process of arrest - whether arrest of the person or of the profits - presumes that the plaintiff has the power, fiscal or physical, to arrest someone. It is conceivable that a plaintiff might not be strong enough to make an arrest. In this case the *Sarasvatīvilāsa* prescribes a remedy which it calls *ākrośa*, which we might translate as "reprobation". This is a particular process reserved for the "weak" and involving some peculiar changes in the normal conduct of the trial. It will be helpful to begin our look at *ākrośa* with the following passage found on pages 162-163 of the *Sarasvatīvilāsa*:

14 The *Mitākṣarā* on *Yājñavalkyasmṛti* 2.1o quotes *Kātyāyana* (117 in Kane's reconstruction):

atha cet pratibhūr nāsti vādayogyasya vādinaḥ /
sa rakṣito dinasyānte dadyād dūtāya vetanam //

Even when the king was forced to confine someone as in the case of the litigant who was unable to provide a surety, the litigant had to pay for the cost of his own confinement. See also Pollock and Maitland, loc. cit.

15 *Kātyāyana* 12o as explained in the *Vyavahāracintāmaṇi*, edited by Ludo Rocher, Gent, 1956, p. 49:

gṛhītagrahaṇo nyāyo na pravartyo mahībhujā /
tasya vā tat samarpyaṃ syāt sthāpayed vā parasya tat //
gṛhyata iti grahaṇaṃ vivādapadaṃ vastu. tac ca pratītipakṣe pratyarthini. anyathā madhyasthe yāvadvicāraṃ dhāryam.

āsedhākrośabalābalam:
nanv āsedho nāma phalasyāvarodhaḥ. madhyasthajanagocare vivādāspadībhūtadravyanidhāpanam iti yāvat. phalānutpattau tatsvīkārodyogoparodhaḥ. phalanāśakaraṇodyoge svarūpāsedho rājājñayā nirodhanam āsedhaḥ. ākrośas tu tādṛśo na bhavati. kiṃtu phalaṃ na bhoktavyam. patraṃ na lekhanīyam. sākṣibhir na bhavitavyam. mayā sārdhaṃ nyāyanirṇayāyāgantavyam. anyathā rājājñām ullaṅghitavān ityādyākārakavāgvyāpārarūpo na kāyikavyavahārarūpaḥ. ataś cāsedhād ākrośo durbala eva. tata āsedha eva vyavahārabījaṃ nākrośa iti cet. maivam. ākrośāsedhayoḥ viṣayabhedo na svarūpabhedaḥ. durbalenārthinā kṛtoparodha ākrośapadābhilapyaḥ. balavatā tu kṛta āsedhapadābhidheya iti. tathā ca Viṣṇuḥ:
durbalaprabalakṛtāv ākrośāsedhau.
iti. ayam arthaḥ. durbalasya balaṃ rājeti rājapuruṣair durbalenāpi kārita āsedha ākrośamūlo 'pi prabalakṛtatvād āsedha eveti. durbalenaivākrośa iti lakṣaṇaṃ suṣṭhu paraṃ tv āsedhād ākrośasyeyān viśeṣaḥ. ākrośaḥ kālāntare dharmanirṇayānantaraṃ phalagatam api svatvam ākarṣayati. āsedhas tv āsedhasamaya eva phalam apy uparuṇaddhīti.
atrāhuṇ:
"balavatāsedha eva kartavyo nākrośa" iti Bhārucyādayaḥ.[16]
atrākrośakartur nirūpaṇaṃ sphuṭatvān na kṛtam. ataś cākrośasadbhāve tu tadabhāvaviśiṣṭatvarūpadharmopamardanadvārā viśiṣṭaṃ kṛtsnaṃ pramāṇam upamṛdnāty ākrośa iti.

The Relative Strength of Arrest and Reprobation:
(Objection) Arrest is, indeed, the attachment of income, as long as the object of litigation is deposited with a neutral party. If no income is available this obviates the effort to appropriate it. If there is an attempt to destroy the income, then there is arrest of the corpus (the respondent), i.e. detention under the king's order - arrest. However, reprobation is not like that; rather it does not involve a physical transaction, but takes a verbal form like this, "No income is to be enjoyed. No document should be written. There should be no witnesses.

16 Neither the Viṣṇusūtra nor Bhāruci's commentary are found elsewhere.

Please come along with me for a decision at law, otherwise you will violate the king's order." Therefore reprobation is less effective than arrest, and thus arrest alone is a source of legal proceedings and not reprobation.

(Reply) Wrong. Arrest and reprobation differ with regard to the jurisdiction, not the corpus. An impounding which has been done by a weak plaintiff should be referred to with the word "reprobation", but one done by a strong plaintiff should be called "arrest". Thus, *Viṣṇu*:

Reprobation and arrest are done by the weak and the strong, respectively.

This is the meaning: "The king is the strength of the weak"- an arrest, though based on reprobation, is effected, even by someone who is weak, through the king's men.

It is arrest only based on the fact that it is done by the strong. Indeed, the definition is "Reprobation is only done by the weak." However, there is this much distinction between arrest and reprobation: Reprobation (*ākrośa*) draws out (*ākarṣayati*) at a different time the ownership which is inherent in the profits immedately upon a decision at law (cf. note 23, below). Arrest impounds profits as well, only at the time of arrest. Here, *Bhāruci* and others have said:

"Arrest alone is to be done by the strong, not reprobation."

Here there is no mention of the agent of the reprobation because it is obvious. Thus if it is a case where reprobation takes place, that reprobation eliminates the relevant evidence completely by eliminating the rules which apply when there is no reprobation.

It is clear that *ākrośa* is a request by a "weak" party for the king to make an arrest on his behalf; so, *ākrośa* is a form of arrest in that sense. What is more interesting is that *ākrośa* seems to alter the normal mode of legal procedure in a case. The *ākrośakartṛ* says, "*phalaṃ na bhoktavyam*, etc." denying the use of any human evidence in the settlement of the case. Several lines earlier (pages 159-160) the author discussed the possibility that normal behavior of witnesses, etc.

should not always be followed, e.g. if telling the truth in a trial would lead to the death of someone, then the witnesses may prevaricate. He also cites the case of Māṇḍavya[17] mentioned in *Nārada* 1.42[18] as an example of the care which must be exercised in hearing a case. He says:

> *ataḥ parīkṣaṇam āvaśyakam ity abhiprāyaḥ. ayam abhisandhiḥ. atrākrośābhāvaviśiṣṭā eva likhitādayaḥ pramāṇapadavīm avagāhante nānyathā. ata evāha* Viṣṇuḥ:
> *"āsiddham anāsiddham eva"*
> *iti. etad vyācaṣṭe* Bhāruciḥ:[19]
> *"āsiddhaṃ sarvaṃ likhitabhuktiprabhṛti. anāsiddham āsamantāt*[20] *siddhaṃ na bhavati. kadāpi siddhaṃ na bhavatīty arthaḥ."*
>
> Thus, the intention is "close examination is necessary". This is the gist - Documents, etc. take on the status of evidence only when they are characterized by the absence of reprobation, and not otherwise. For this reason *Viṣṇu* has said:
> "Arrested. *Not* Arrested."
> *Bhāruci* explains this:
> "Everyone is arrested on the basis of documents, witnesses, etc. Not arrested means not completely proved. Whenever it is not proved. This is the meaning."

17 This story is related in *Mahābhārata* 1.lol (critical edition). Māṇḍavya was an ascetic who was mistakenly convicted of robbery on circumstantial evidence. This error was corrected but not before Māṇḍavya was impaled on a sharp pole (*aṇi*) hence the epithet Aṇimāṇḍavya.

18 *yāty acoro 'pi coratvaṃ coraś cāyāty acoratām /*
acoraś coratāṃ prāpto māṇḍavyo vyavahārataḥ //

19 This sūtra of Viṣṇu and Bhāruci's explanation of it are found only in the *Sarasvatīvilāsa*.

2o I have changed the reading here, since there is something awry in the text.
The reading *avaruddham* is marked with a "2", but there is no corresponding footnote.

From this we see that the presence of *ākrośa* disqualifies human evidence. - It seems clear that even when there is evidence of the nature of witnesses, documents, etc. that if a "weak" plaintiff appeals to the king they should not be admitted, then the dispute must be settled by means of *daivapramāṇa*, oaths, and ordeals. The statement of Viṣṇu, "*āsiddham anāsiddham eva*". I take to refer to the preliminary hearing which must take place before the king gives his order for the arrest. If there is not enough evidence to warrant an arrest, then the claim of the plaintiff will never be proved, and the case is not to be admitted to trial. This is true whether the plaintiff is a "strong" one and wants to perform an *āsedha* or if he is a "weak" one and wants to have the respondent arrested by *ākrośa*.

The process of a trial settled by human evidence may be a time consuming one. Once the plea and reply are heard time may be given to the parties to muster their evidence,[21] witnesses may need to be summoned from afar adding to the delay and their summoners would have to be paid subsistance and wages[22] adding to the cost of the trial. It is likely that the *Sarasvatīvilāsa*'s compilers were concerned for that "weak" plaintiff who could not endure any delay in the resolution of his case nor the cost of a prolonged trial, and so they suggested this extraordinary option for him - *ākrośa*. Having presented his case to the king at the preliminary hearing, it would be possible for him to greatly abbreviate the time required for resolution of the dispute by telling the respondent that he must accompany him to the court where the dispute will be settled. Since the king has already admitted the plausibility of the plaintiff's case in the preliminary hearing it would be possible to get di-

[21] For example, *Nārada* 1.44:

gahanatvād vivādānām asāmarthyāt smṛter api /
ṛṇādiṣu haret kālaṃ kāmaṃ tattvabubhutsayā //

[22] *Kauṭilya* 3.1.22 and 23. The subsistence is paid to the agents of the court (*puruṣa*) not, as Kane, op. cit., III, p. 345 says, to the witnesses themselves.

rectly to the presentation of the divine evidence. This would probably take the form of an oath. The *Sarasvatīvilāsa* says that the ownership of the profits are established (*ā-kṛṣ* is clearly a folk etymology of *ākrośa*) at a different time (*kālāntare*) or, possibly, after an interval of time. It is this very characteristic which distinguishes oaths from ordeals.[23] The likelihood that an oath would be used is furthered by the consideration of the cost of the administration of an ordeal which could be considerable,[24] and since the plaintiff is "weak" it seems unlikely that he would be asked to bear the burdens of an ordeal.

Ākrośa prevented the admission of *mānuṣapramāṇa* into a trial even when it existed. *Āsedha* was not restricted in its application by the presence or absence of human evidence. The rule was that only a "weak" plaintiff could invoke the unusual procedures involved in *ākrośa*. The choice between *āsedha* and *ākrośa* was not determined by the kind of evidence available. In a discussion of the use of oaths as evidence and when they can be admitted as evidence in a trial, the *Sarasvatīvilāsa* (p. 217) quotes the following verse from *Hārīta* and gives the accompanying comments:

> *kośataṇḍuladharmāṃs tu dharmasaṃbhavam eva ca /*
> *putradārādiśapathān sarvakālaṃ prayojayet //*
> *nanv ākrośābhāvaviśiṣṭā likhitādayaḥ pramāṇapadavīm avagāhanta ity uktam. tan na saṃgacchate. ākrośābhāvasya sarvadā sākṣisādhyatvaniścayābhāvāt. divyenaiva sādhyatve tatra mānuṣaṃ pramāṇaṃ niravakāśaṃ syāt tathā hi ākrośābhāvaḥ sākṣisādhyo na bhavati. kenacit kadācit kathaṃcid api kṛtasyākrośasya sarvathā carmacakṣuṣāṃ divyajñānaśūnyānāṃ niścetum aśakyatvāt. kiṃ tu devadattas svayam evārthī na kvacit kadācit kenacit kathaṃcid apy āsedhanīya*

[23] See the *Mitākṣarā* on *Yājñavalkya* 2.96 - ordeals are *samantaranirṇayanimitta*, "the basis for an immediate decision" and oaths are *kālāntaranirṇayanimitta*.

[24] See my Divyatattva *of Raghunandana Bhaṭṭācārya: Ordeals in Hindu Law*, Manohar Publications, New Delhi, 1981, pp. 31 - 32.

iti kṛtvā svayam evāsedhābhāvaṃ jānāti. tathaiva pratyarpya sarvaprakāreṇāsedhya iti sa evāsedhyaṃ samyag jānāti. nanv āsedhas sasākṣikaḥ. tādṛśa sākṣyabhāvād evāsedhābhāvas samyag udbhāvayituṃ śakyaḥ. maivam. na hy abhāvasya sākṣitvaṃ kvacid dṛṣṭam. nanv anupalabdhipramāṇād evāsedhābhāvas sādhayituṃ śakyate. liṅgānām anupalabdhipramāṇānugrāhakatayā prāmāṇikam evāsedhābhāvajñānam iti cen na. sākṣyanupalabdhyā sākṣyabhāva eva jñātuṃ śakyo nāsedhābhāvah vaiyadhikaraṇyābhāvāt. nanu sākṣyanupalabdhyā sākṣyabhāvo nirṇīyate tena sākṣyabhāvenāsedhābhāvo nirṇetuṃ śakyata iti cet satyaṃ. sasākṣikāsedhasthale prāmāṇikatvam āsedhābhāvasādhanasya bhavatu. asākṣikāsedhasthale tu pūrvoktam evāvatiṣṭhata iti na kaścid virodhaḥ. kiṃcāsedhānāṃ sasākṣikatvaprasiddhiḥ prāyikābhiprāyā. loka āsedhāḥ sasākṣikā asākṣikā api santi. dṛṣyante ca laukikavyavahāreṣu. āsedhagamakasākṣyabhāvād evāsedhābhāva iti niścaye dharmasya tattvaṃ nihitaṃ guhāyām īśvara eva jānātīti sa sākṣikadharmavyāhatis syāt. nanu sarveṣāṃ mānuṣavigrahavatām āśayadoṣosadbhāve sasākṣike 'pi prāmāṇike vyavahāre sākṣiṇāṃ vā lekhakādīnāṃ vā mūlasvāmino vāpy āśaye katipayaviśeṣā udbhāvayituṃ śakyā iti sarvatra divyam eva pravartate. ato mānuṣapramāṇaṃ niravakāśaṃ syād iti cen maivam. mānuṣapramāṇānāṃ pariśuddhānāṃ sadbhāve 'py āśayadoṣobhāvanadvārā teṣāṃ mūlaśaithilyam āpādya divyāṅgīkāre nirṇetṛbhis sabhyaiḥ prāḍvivākena ca vyavahārasya sottaratvam āpādyāvaṣṭambhena nirṇayaḥ kartavyaḥ.

He should employ in any season, where possible according to what is right, the holy water, the rice, and the Dharma ordeals and the oaths on sons, wives, etc.
(Objection) It has been said, "Documents, etc. take on the status of evidence only when they are characterized by the absence of reprobation."
(Reply) That does not apply, because it is not always certain that a proceeding devoid of reprobation can be settled on the basis of human evidence.[25] If it could be set-

[25] The term *sākṣin* can be used to mean more than just "witness". It can be used to mean any evidence in general, cf. *Vyavahāracintāmaṇi*, ed. cit.,

tled only by an ordeal, then human evidence would be excluded, under these circumstances a proceeding devoid of reprobation cannot be decided by witnesses because flesh and blood mortals, lacking divine knowledge, are always incapable of determining the why, when and how of a case in which there is reprobation.[26]
However, let's say that Devadatta is the plaintiff, and he alone knows that a proceeding is devoid of arrest after having made the statement, "He should not be arrested anywhere, anytime, by any way or means". On the other hand, having replied, "He should be arrested by all means". He alone knows correctly that he (the respondent) should be arrested.[27] (Objection) Arrest entails witnesses (human evidence). Absence of arrest can only occur because of an absence of such witnesses (human evidence).[28]

25 (cont.)
184.1, also *Vyavahāraprakāśa* of Mitra Miśra edited by V.P. Bhāṇḍārī, Chowkhamba Sanskrit Series no. 3o.7, Benares, 1932, p. 59. The term may also mean - as it does here - human evidence, cf. *Vyavahāramātṛkā*, ed. by Asutosh Mookerjee, *Memoirs of the Asiatic Society of Bengal*, 3.5, p. 3o7 where *sākṣiṇaḥ* is glossed *dṛṣṭakriyopalakṣaṇam*.

26
The point being obscurely made here is that just as mortals cannot settle an *ākrośa* dispute without divine evidence (because human evidence is inadmissible), neither can they settle an *āsedha* dispute if its nature is such that there is no human evidence.

27
In this example, the proceeding in which Devadatta is a plaintiff is one in which there is no human evidence to present to the king to support his claim. His request for arrest of the respondent is based only on his knowledge of what is right. Should he wrongly or maliciously arrest the respondent (determined by the finding of the court) he is then liable to punishment as we have seen above in Nārada 1.51.

28
The objector's point is that if there is no human evidence then the plaintiff cannot have the king's endorsement for arrest.

(Reply) Not so. Absence has nothing to do with witness-hood.
(Objection) Absence of arrest can occur only through non-cognition (*anupalabdhi*) as a means of true knowledge. Knowledge of the absence of arrest is only true knowledge because of the appropriateness of non-cognition as a means of true knowledge for the indications (*liṅga*).[29]
(Reply) No. Absence of witnesses is the only thing that can be known by non-cognition of witnesses, not absence of arrest, because there is no relationship between the two.[3o]
(Objection) Absence of witnesses is determined by non-cognition of witnesses. Absence of arrest can be determined on the basis of *this* absence of witnesses.
(Reply) That is true. If the circumstances are such that an arrest would involve witnesses then this reason for the absence of arrest must be true, but if the circumstances are such that an arrest would not involve witnesses, then what was said above stands. There is no contradiction. Moreover, arrests entailing witnesses are well-known because it is the common practice, but in fact there are arrests entailing witnesses and there are arrests which

[29] That is, absence of arrest (*āsedhābhāva*) is known when the *pramāṇa* non-cognition (*anupalabdhi*) is appropriate for the *liṅga* (in this case, *sākṣyabhāva*).

[3o] The reply is - cognition of the absence of one thing does not indicate the absence of something else: the cognition "non-pot" does not indicate "non-cloth". There is a special relationship between a thing "*x*" and its absence, "*non-x*". This relationship is called *pratiyogita* "counter-positiveness". The entity *non-x* (or non-cognition of *x*) indicates that there is absence of its counter-positive entity *x*. It does not indicate absence of *y* or *z*. So, non-cognition of witnesses indicates absence of witnesses, not absence of arrest or of pots. Cf. B.K. Matilal, *The Navya-Nyāya Doctrine of Negation*, Harvard Oriental Series, volume 46, Cambridge, 1968, pp. 52-61. *Vaiyadhikaraṇyam* or *vyadhikaraṇatva* "non-occurence in the same locus" is the quality which applies to the two entities in this relationship - *non-x* and *x* do not occur in the same locus, see Bhīmācārya Jhalakīkār, *Nyāyakośa*, Bombay Sanskrit and Prakrit Series no. 44, Poona, (reprint) 1978, p. 822.

do not, and these are seen in normal legal proceedings. If you decide, "Absence of arrest is due only to the absence of witnesses conducive to arrest," and then say, "God alone knows the true nature buried in the heart," that would contradict the nature of (trials relying on) witnesses.
(Objection) Since there exist biases in the attitudes of all human beings, many pecularities can arise in the heart of witnesses, scribes, or even original owners[31] in a legal proceeding which relies on witnesses; so, in every case, only divine evidence works. Therefore human evidence should be excluded.
(Reply) Not so. Even if there is admissible human evidence available, and the deliberating judges and the chief judge determine that there is a basic weakness about the evidence due to the occurence of some biased attitude, if (the parties come to) an agreement to resort to divine evidence, after having arranged for the procedure to include a bond,[32] they (the judges) should reach their decision with confidence.

This bit of panditry (to use one of Prof. Derrett's terms) is intended to show that *āsedha* is not limited by the nature of the evidence available in a trial. The only limiting factor in

31 The agents for the three basic types of human evidence, *sākṣin, likhitam* and *bhukti*.

32 The "bond", *uttara* or *paṇa* (according to the *Sarasvatīvilāsa*) is what is elsewhere more correctly referred to as a *śiras*. It was a promise by the party not undergoing an oath or ordeal to pay a fine if the other party proved his case successfully by the ordeal. It was designed to prevent abuse of ordeals. The *paṇa* or *uttara* was, in fact, a judicial wager whose exact function seems to have been lost in antiquity, but the term surfaces from time to time in *smṛti* literature and often in a confused manner, see my forthcoming "The Judicial Wager in Hindu Law" in the *Annals of the Bhandarkar Oriental Research Institute*.

choosing between *āsedha* and *ākrośa* is the "strength" or "weakness" of the plaintiff. This institution, *ākrośa*, is unique to the *Sarasvatīvilāsa*[33] and if my explanation of its use is correct, it shows a high degree of sensitivity to the plight of the weaker sections of society when they needed judicial remedies.

[33] It is interesting to note that the word *āsedha* does not occur in any of the 500 or so works (including the *dharmasūtras*) indexed in the *Vaidikapadānukramakoṣa* edited by Vishva Bandhu, Lahore and Hoshiarpur, 1942-1965. Nor is it found in *Manu* or *Yajñavalkya*. *Nārada* is the first *mūlasmṛti* to use the term. The use of the term *ākrośa* in this way is unique to the *Sarasvatīvilāsa*.

Part III

MODERN HINDU LAW

CERTAIN ASPECTS OF ADOPTION PREVAILING AMONGST THE HINDUS

E. S. VENKATARAMIAH*

I consider my visit to the University of London in June, 1977 as a pilgrimage to a place of learning in which there sits a great rishi who has his abode on the banks of the Thames, interpreting Hindu law to his distinguished pupils. Within a few minutes after I met Dr. Derrett in his chambers, he took out a copy of an article he had contributed to the Journal Section of the Bombay Law Reporter in 1973[1] in which he had commented upon a judgment in *Devagya Tuklya & Ors.* v. *Shivgya Igya & Ors.*[2] which I had delivered in the Karnataka High Court expressing my dissent from the decision of the Bombay High Court in *Apaji Narhar Kulkarni & Anr.* v. *Ramchandra Ravji Kulkarni*[3] and declaring that the said decision was no longer good law in those parts of the State of Karnataka which formed part of the State of Bombay prior to November 1, 1956. I felt surprised at the remarkable memory of Dr. Derrett when he gave out the details of my judgment (including the names of the parties to the case) nearly four years after he had commented on it and also the particulars of a decision of the Gujarat High Court

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1 75 Bombay Law Reporter (Journal), p. 89.

2 A. I. R. 1973 Mysore 4.

3 (1891) I. L. R. 16 Bombay 29 (F.B.).

in *Jaswantlal Linabhai* v. *Nichhabhai Vallabhbhai & Ors.*[4] in which a similar question had arisen for consideration. It was then that I fully realised the deep dedication of Dr. Derrett to Hindu law and its evolution. Dr. Derrett's writings are characterised by great erudition and clear thinking. It is no exaggeration to say that no other academic lawyer - eastern or western - has studied and commented upon the principles of Hindu law as deeply and extensively as Dr. Derrett has done in recent years. It is a great honour to be invited to write an article to the Festschrift to be published in honour of the great Professor. In this article certain aspects of the law of adoption prevailing amongst the Hindus are dealt with, with special reference to some of the comments made by Dr. Derrett on them.

ASPECTS OF ADOPTION

Hindu law, according to Mayne has the oldest pedigree of any known systems of jurisprudence. A characteristic feature of Hindu law, was and is the recognition of the institution of adoption. Roman law also shared this characteristic. It is significant that in the twentieth century many countries for example, like the U.K. provided by legislation for the recognition of this institution where none existed previously. Adoption in a true sense is therefore an ancient and a modern institution.

Shri Viswanath Narayan Mandlik who has written a learned commentary on the Vyavahara Mayukha and the Yajnavalkya Smriti refers to certain instances of adoption, though not in the dattaka form as it is understood today, which occurred in ancient times. He first mentions about the adoption of Sunahśepa, son of Ajigarta by Visvamitra who had a hundred sons living at the time he made the adoption. Sunahśepa gave himself and was therefore a *swayam datta* (self-given). This incident is referred to in the Rig-Veda. Then there is the instance of adoption of more than one son and of giving away

[4] A. I. R. 1964 Gujarat 283.

all the sons referred to in Yajur Veda where Atri Rishi gave away all his children to the son of Urva who longed for a son. In Ramayana there is a reference to the adoption of a daughter. That was the case of adoption of Santa, daughter of Dasaratha by Lomapada who gave her in marriage to sage Rishya Sringa. The Mahabharatha also refers to a similar instance in which Kunti Bhoja took Pritha, daughter of Vasudeva in adoption and gave her in marriage to Pandu. The present dattaka form of adoption differs from those cases of great antiquity in many respects.

The evolution of Hindu law of adoption has given rise to an important question: whether the act of adoption was a secular or a religious act. The question is not merely of theoretical interest only but has practical implications as well. In early days there was considerable confusion on this question. For example, the Privy Council in an early case stated:

> "The law of adoption owes its origin to the timorous superstition of the inhabitants of India. That people vainly imagining that by leaving male children in this world they secured themselves against the torments of the next, seem to have been so anxious to obtain a natural or adopted son that they have established but imperfect securities against fabricated adoptions."[5]

On the other hand in a much later decision it more guardedly observed that the law of adoption might have had the origin on account of the desire to have a son as an object of affection, as a protector in old-age and as an heir to property; and that owing to Brahmanical influence a peculiar religious significance was attached to the institution.[6]

The first view of the Privy Council is apparently based on the opinions of earlier European writers who attributed

[5] *Sootrugun Sutputty* v. *Sabitra Dye,* (1834), 2 Knapp's Reports, p. 287 (P. C.); P. Pundit's Privy Council's Digest Vol. 1, p. 26.

[6] *Amarendra Man Singh* v. *Sanatan* (6o I. A. 242).

the origin of the institution of adoption to the superstition of Hindus who believed in the spiritual efficacy of having a son who would relieve them from the torments of the next world. In coming to this conclusion they appear to equate the ancestor-worship that existed in Vedic times with the *Shraddha* rites of later times.

Sarvadhikari pointed out that the ancestor-worship of earlier times differed in many respects from the *Shraddhas*. Ancestor-worship prevailed in many ancient societies like the Chinese and the Japanese, and in ancient Greece and Rome. Even the followers of Christianity seem to have imbibed it as is revealed in the observance of the All Souls' Day. But as Sarvadhikari points out there are important aspects in which the ancestor-worship differed from the performance of *Shraddhas* of later times.[7] Neither in the Rig-Veda, nor in the White Yajur-Veda, is there any mention of the *Shraddhas* of the present age. "Their 'ancestral sacrifice' is a daily sacrament which is observed to this day. The funeral *Shraddha* is a later institution, and is quite distinct from the ancestral sacrifice of the Rig and Yajus. It cannot, however, be doubted that the *Shraddha* originated in *pitri yajna*, but is not identical with it".[8] The Vedic ancestral worship is not done to confer spiritual benefit on the ancestors as in a *Shraddha* but to invoke their blessings and protection on the performer. The *pitris* of Vedic times were not specially mentioned and there was no distinction drawn between the paternal and maternal ancestors. The following extracts from the Rig-Vedic hymns illustrate this:

> "Fathers, who are now sitting upon this *kusha* grass, you will have to protect us, your children, ignorant of the ways of the world. Accept this clarified butter we have prepared for you and then give us effective

[7] R. Sarvadhikari, *The Principles of the Hindu Law of Inheritance*, p. 23 (Tagore Law Lectures 1880), Calcutta, 2nd edn., 1922.

[8] Id. at 31.

protection, and increasing our happiness, remove the cause of our grief, and save us from sin and misery.

This sacrificial butter is like a precious gem, dear to you. Come near unto this, we pray you, kind fathers; give a gracious hearing to your praises, speak well of us, and confer blessings upon us." [9]

Golap Chandra Sarkar, in his Tagore Law Lectures states that the usage of adoption owed its origin to the principle of slavery, whereby a man was made subject of dominion or proprietary right.[10] According to him the primitive mind drew little distinction between a man and lower animal, and conceived of the relationship between parent and child as giving rise to the right of dominion by one person over another. He says that the text of Vasishtha, which is the foundation of the institution of adoption among the Hindus, gives the reason for the power of parents over children. The text of Vasishtha runs:

"A son produced from the virile seed and the uterine blood is an effect, whereof the mother and father are the cause: the mother and the father therefore are competent to give or sell or abandon him."[11]

Sarkar draws a parallel with the early Roman Law in this context and shows that under the power of *patria potestas* vested in him, a father could sell, or expose his children or even put them to death.

To buttress his point, Sarkar refers to the Smritis of Manu and Narada wherein the modes of acquisition of slaves have been described. Manu states the seven causes of slavery, viz., capture in war, voluntary submission to slavery in consideration of maintenance, birth from a female slave, sale,

[9] *Rig-Veda*, Bk. 1o, Verse 15, cited at id. at 26 - 27.

[10] Golap Chandra Sarkar, *The Hindu Law of Adoption*, 1 (Tagore Law Lectures 1888), Calcutta, 2nd. edn., 1922.

[11] XV, 1 - 2, *Sacred Books of the East*, Vol. XIV, Pt. II, 75 (ed. Max Müller, 1965 reprint).

gift, inheritance from ancestors, and condemnation to slavery by way of punishment.[12] Narada deals with the topic more elaborately and refers to fifteen modes in which a person is reduced to slavery. The point that is to be noticed is that when once a person becomes a slave, he is contemptuously referred to as a biped hardly distinguishable from a quadruped.

In ancient society the position of the son, relatively to his father, according to the author is hardly different from that of a slave. But for our purposes, Sarkar's explanation for the observance of religious formalities in the *dattaka* form of adoption is important. After stating that in *dattaka* form of adoption the gift by the father and acceptance by the adopter, indicate nothing more than the transfer of dominion from the giver to taker, he observes:[13]

> "The subject of the gift and acceptance is not thereby constituted a son of the acceptor. His intention to make the boy his son must be manifested by additinal formalities... . It is upon this ground that the Hindu commentators insist upon the observance of religious ceremonies in addition to gift and acceptance for the completion of an adoption, so that the intention may be clearly made known that the boy is not taken for a slave."

Sarkar points out in support of his position the views of Balam Bhatta, Nanda Pandita and Jagannatha as to the consequence if an adoption fails for want of religious ceremonies or on other grounds. According to these writers, then, the adoptee becomes the slave of the adopter. No doubt Colebrooke doubts the correctness of Jagannatha's view. But on this Sarkar categorically says that Jagannatha's view "appears to be perfectly consistent with the ancient doctrine of *patria potestas* and modes of slavery."[14] According to Sarkar the doubts

[12] The Laws of Manu VIII, 415, *Sacred Books of the East*, Vol. XXV, 326 (ed. Max Müller, 1964 reprint).

[13] *Supra*, note 1o at 5.

[14] Ibid. at 6.

entertained by Colebrooke should be regarded as "natural" in view of his knowledge of the Hindu society of his times which had softened down on account of the religious influence.[15]

J. L. Kapur (who later became a judge of the Supreme Court) in his work on adoption equally discounts the view that the institution of adoption had its origin in religious notions of Hindus.[16] The Indian social system was patriarchal and "the notions of family were not different from those that existed in the Roman Law und the *jus* of *patria potestas*".[17] Along with the patriarchal family, there developed the idea of a tribe which was in need of males for purposes of protection. So boys were welcome in a tribe, if the mothers belonged to the tribe, irrespective of the paternity of the child. Therefore, under Hindu law at least 12 kinds of sons were recognized. But in due course the society suffered from the abuse of *patria potestas* and the institution of secondary sons resulted in the fall of moral standards. So the sages in order to give a sacred character to marriage, to regularise *patria potestas* and to eradicate immoral features that had grown up in the institution of secondary sons, employed the medium of religious superstition. "The ceremony of ancestor worship was to be a means by which spiritual benefit was conferred on a father and other ancestors. For this they created the necessity of a son, who could confer this benefit and perpetuate the name and no one could do more efficaciously than a real legitimate son".[18]

From this Kapur concludes that the doctrine of the spiritual benefit was not the origin of adoption but that spiritual benefit was used to discourage secondary sons and to encourage morality.[19] Indeed a new meaning was given to the

[15] Ibid.

[16] J. L. Kapur, *The Law of Adoption in India and Burma*, 1 (Ist ed. 1933).

[17] Id. at 2.

[18] Id. at 9.

[19] Id. at 11.

word *putra*. Formerly it meant 'one who aids' or 'one who assists' in the secular sense. But now it means one who saves the father from the hell known as *put*. Yaksha the first Sanskrit lexicographer gives both, a secular and religious meaning, to the word *putra* by stating:[20] "A *putra* is one that aids much or assists in old age or delivers from the hell called *put*".

To assess the relative merits of these two opposing theories, we must ascertain the causes or reasons that led to the disappearance of other secondary sons excepting that of *dattaka*. As noted earlier Manu mentions thirteen kinds of secondary sons. Some other Dharma Shastra writers even lengthened the list by recognizing fifteen which included the residuary category by whatever manner begotten. (Yatra-kvachanotpadita). Kane's table relating to the position accorded to an adopted son in the works of Dharma Shastra writers, brings home the well-known fact that he (*dattaka*) was ranked very low in the earlier works and subsequently was recognized as being second only to the *aurasa*.[21] For example he was ranked ninth in Kautilya, Sankha-Likhita, Narada, Devala and Yama; eighth according to Vasistha and Vishnu; seventh according to Harita and Adiparva; fourth under Manu, Baudhayana, Brihaspati and Brahma-purana and third in Gautama. Golap Chandra Sarkar points out that the Mitakshara and Dayabhaga[22] recognize all the twelve kinds of secondary sons. But he points out that works like Vyavahara Mayukha Smriti Chandrika recognized only *aurasa* and *dattaka* only[23] stating that secondary sons, other than *dattaka*, were to be avoided in Kali age. Dattaka Mimansa of Nanda Pandita also for the same reason stated that only *aurasa*, *dattaka* and *kritrima* sons

[20] Cited in Kapur, *supra* note 16 at 13.

[21] P. V. Kane, *History of Dharma Sastra*, Poona, 2nd ed., 1973, Vol. III, 645.

[22] Golap Chandra Sarkar, *supra* note 1o at 94.

[23] Id. at 1o1 - 1o2.

alone were valid. Kane also in his account on *Kalivarjya*[24] lists the recognition of secondary sons (other than *dattaka*) as one among fifty five acts prohibited under the doctrine.

> (Note: An elaborate discussion on the subject of different kinds of sons recognised by ancient Hindu Law is to be found in a recent decision of the Supreme Court of India in *Shyam Sunder Prasad Singh & Ors.* v. *State of Bihar & Ors.*)[25]

Thus the view of Kapur as to the recognition of a *dattaka*, next only to an *aurasa* is not substantiated by the statements in the Dharma Shastras and commentaries of later times. Derrett neatly states his view on the subject with his natural historical insight, in a footnote thus:[26]

> "Sarkar, 47, took the view that the 'spiritual benefit' doctrine was used deliberately to eliminate all secondary sons, and in particular those whose birth was due to immorality. Kapur (8 - 9) absurdly exaggerates this view while copying it."

Writers prior to Derrett when dealing with the evolution of the institution of adoption, for their conclusions relied heavily on the Hindu and the Roman laws. These laws were developed in strongly patriarchal societies. Derrett on the other hand pointed out to us what we can learn from the pre-Aryan customs about the development of the institution.[27] He refers to them for the sake of convenience as customary adoption. After pointing out that Aryans tended to think adoption chiefly in terms of exercise of parental power and the distinction between gift and sale in slavery, as a matter of

[24] Kane, *supra* note 21 at 931.

[25] A. I. R. 1981 S. C. 178.

[26] Derrett, "Adoption in Hindu Law", *Z.V.R.* 6o, p. 34 ff., p. 42, fn. 43; reprinted in *Essays in Classical and Modern Hindu Law*, Vol. 3, p. 25 (1977).

[27] Id. at 39.

construction, he summarises the features of the pre-Aryan or Dravidian adoptions thus:[28]

> "It is evident that the pre-Aryans on the whole viewed the matter from another angle. They were aware that sonship was not merely a matter of physical relationship, nor of guardianship or mutual affection, and they were profoundly convinced that a child's invisible bond with his begetter could never be neglected without other-wordly loss. They considered that the mother, as the child's undoubted this-worldly owner and nourisher, was entitled in a suitable set of circumstances to give the child to another parent or married couple, in order that he might be brought up as his or her or their own child, equal in privileges and prospects with their own children. The most approved circumstances in which this outright gift might take place were sickness or famine or some other situation in which the true parent could not fulfil her obligations towards the child. But apart from this aspect of the matter, which was purely secular, the transfer of the child was not necessarily complete. His affiliation for spiritual matters was not affected. Nor was the position anywise different when the adoption was made by agreement between the child himself, or a grown adult and the adopter, nor in the other sorts of relationships, such as 'son-in-law in the house' or giver of support and affection in old age, or merely son of a daughter, where secular needs of the adopter actual as well as partly actual and partly prospective were catered for by the creation of legal rights. The Dravidians were prepared to accept the difficult and involved position that an adoptee could belong at the same time to two families, or even three families (in case of a particular sort of marriage) provided the needs to be served by the various aspects of the situation were capable of simultaneous recognition."

[28] Ibid.

Thus whether we view it from the pre-Aryan (Dravidian) or Aryan position, the institution of adoption had not originated in the notion of "spiritual benefit" or of "religious superstition" and these were the later transformations of the earlier secular bases of the law of adoption.

It would appear that customary adoptions and secular adoptions like those of Jains have suffered distortions at the hands of the courts. For they painted with the same brush and colour all categories of adoptions. That these adoptions differ from the Aryan adoptions in material respects is generally ignored.

As pointed out by Mayne, the adoptions under the Marumakattayam and Aliyasantana laws are "wholly secular". [29] There are no ceremonies prescribed, the non-performance of which would in any way invalidate an adoption. Very often, females are adopted. The distinguished author further stated: "The law applicable being essentially customary, the question whether the adopted son loses his rights of inheritance in the natural family can be decided only by having recourse to evidence as to custom, in the absence of texts or express judicial decisions."[30] In *Secretary to State for India* v. *Santaraja Chetty* [31] the Madras High Court stated that an Aliyasantana adoption "is but slightly different from the nomination of a successor".[32]

In *Gopinath Shetty* v. *Santhammal* [33] the plaintiff, a minor, contended that notwithstanding the adoption by his maternal grandmother, he was still entitled to right of maintenance from her natural family. In other words he contended

[29] Chandrasekhara Aiyar (ed.), *Mayne's Treatise on Hindu Law and Usage*, p. 98o, (11th Edn. 1953).

[30] Ibid.

[31] (1913) 25 Mad. L. J. 411.

[32] Id. at 422.

[33] (1956) 2 Mad. L. J. 38.

that the adoption did not bring into effect the severance of the rights of the adoptee from the natural family. The learned single judge of the Madras High Court was of the view that the position being governed by the customary law, it was for the plaintiff to establish that the adoptee did not lose the rights in the natural family and that the plaintiff had not discharged that burden in that case.

Derrett in a perceptive article[34] critically examined the decision. He pointed out[35] that "the adoption laws of civilized countries do not invariably cut the adopted child off from the natural family;" that this was exemplified in the laws of France, Germany, Switzerland, Italy, Greece and Spain and also in fifteen States of the United States. He submitted that the burden "plainly and logically falls upon the defendant" to show that the adoption deprived the adoptee of his rights in the natural family, for there was a basis for belief that the Aliyasantana adoption in question in *Gopinath Shetty's* case did not totally sever the maternal grand-mother from her "Kutumba".

If adoption is to be considered as fulfilling the secular needs, it may legitimately be asked as to why it was not recognized under the Mahomedan law. It may be recalled in this context that marriage under Muslim law is regarded as a civil contract. First, it should be remembered that in pre-Islamic Arabia adoption was prevalent. This was abolished by the Quranic Verse in Sura XXXIII, Verse 37. Secondly, Schacht expresses the view that acknowledgment of paternity of a person of unknown origin amounts to adoption.[36] Thirdly, notwithstanding the non-recognition of adoption under the Muslims, Muslims in India may still be governed by the customary law of adoption.

[34] J. D. M. Derrett, "*Adoption in Aliyasanthana Law*", (1956) 2 *Mad. L. J.* 97.

[35] Id. at 99 fn. 6.

[36] J. Schacht, *An Introduction to Islamic Law*, Oxford, 1964, p. 166.

DOCTRINE OF RELATION BACK

Adoption is a prime example of legal fictions. In the Hindu law notably the question arose as to the extent to which a fiction could be stretched. The most troublesome aspect in this regard in the past, and to some extent at present also has been what is referred to as the doctrine of relation back. Justice Vivian Bose referred to it as "an archaic nuisance" and Derrett as "a confounding nuisance"[37]. Under the Shastric Hindu law a woman had no independent power to adopt. She could adopt only by virtue of the express or implied power given by her husband. The question that arose was: if a widow validly adopted a son, from which date the adoption would be effective? Is it the date of death of the adoptive father or is the date of adoption that is material? If the former is regarded as relevant, then by the operation of this fiction upon fiction, the adopted son would be able to divest properties vested in others, prior to his adoption.

In the leading decision in *Pratapsing* v. *Agarsinghji*[38] the Privy Council invoked the doctrine. There a grant of a village was made for purposes of maintenance or *jivai* to a junior member. Shortly after the death of the holder of the village, his widow adopted a son. The plaintiff, an heir of the grantor, claimed the village on the basis of reverter. It was argued that the village reverted back immediately on the death of the holder without male issue, and in the case of *jivai* grant there was no property for the adopted son to take. Sir Ameer Ali delivering the judgment of the Board relied on the view of Sarvadhikari that barring the case when the adopted son had to share the heritage with an afterborn *aurasa* son, "in every other instance the adopted son and the son of the body stand exactly in the same position". He stated that so far as the continuity of the line is concerned, an adoption has retro-

[37] Derrett, *supra* note 26 at 159.

[38] A. I. R. 1918 P. C. 192; 46 I. A. 97.

spective effect. Further, the observations of the Judicial Committee invoked, what is sometimes referred to as the theory of constructive pregnancy of the widow.

The Privy Council stated[39]:

"But it was admitted that a posthumous son would prevent reversion. If the widow happened to be *enceinte* the reversion would naturally remain in suspense until the birth of the child, to see whether it was a male or female. It is futile, therefore, to say that the property reverts to the grantor's estate immediately the breath leaves the body of the *jivaidar*. Here adoption was made within the period of natural gestation and the property was at the time of adoption in the possession of the widow and still is in the possession of the adopted son."

The subsequent observations in the judgment indicate that different considerations may arise if the widow lies by for a considerable period of time and makes no adoption and the property comes into possession of someone who would take it in the absence of a son, natural or adopted, and such person were to create rights in such property within his competency, whilst in possession.

The later decision of the Privy Council in *Amarendra Man Singh* v. *Sanatan Singh*[40] is generally considered as reinforcing the view that property vested in another is divested by the application of the doctrine of relation back. The case involved an impartible Zamindari. The holder, Raja Brajendra, died leaving his wife Rani Indumati and a son, Raja Bhibubendra. The son succeeded to the impartible estate of his father, but died unmarried. According to the family custom, females were not entitled to inherit the Zamindari. Therefore, the estate was vested in Banamali, a collateral heir. Rani Indumati adopted a son a few days later. The courts in India were

[39] Id. at 195.

[40] 6o I. A. 242.

of the view that the Rani could not exercise the power of adoption so as to divest the estate vested in another. The Judicial Committee of the Privy Council was of the view that the widow could adopt even though the estate was not vested in her and even though the son died after attaining the age of full ceremonial competency. Their Lordships emphasized that an adoption is essentially a religious act and therefore, its validity should not be judged according to secular considerations like vesting or divesting of property.

A Full Bench decision of the Mysore High Court in *Venkataiah* v. *Kalyanamma*[41] reveals the theoretical as well as the practical difficulties in the view of the Privy Council. On the analogy drawn between a posthumous son and an adopted son, where the adoption was made by a widow after the death of her husband, the Mysore High Court pointed out[42]:

> "The fact that while Smrithies go to the length of holding that the right of a posthumous son must be recognized from the date of conception, they do not say that adoption should have similar retrospective effect is significant."

The Full Bench pointed out that in a reported decision the widow exercised the power of adoption after seventy one years. The exercise of the right after twenty five years was "not unusual". In the meantime wilderness might have been converted into a coffee estate and waste land into a coconut garden. The Bombay High Court from early times drew a distinction between an estate passing by suvivorship and an estate vested in another by succession. In *Chandra* v. *Gojarbai*[43] Telang, J., laid down the following principles: an adoption by a widow under her husband's authority has the effect of divesting an estate vested in a member of the undivided family; but it does not divest the estate of one on whom the inheritance has devolved from lineal heir of the husband. Fol-

[41] A. I. R. 1953 Mys. 92.

[42] Id. at 101.

[43] 14 Bom. 463.

lowing this distinction, a Full bench of the Bombay High Court in *Balu Sakharam* v. *Lahoo Sambhaji*[44] made a valiant attempt to mitigate the destablizing effect of a logical extension of the doctrine of relation back. It expressed the view that where a coparcenary existed at the time of adoption, the adopted son became a member of the coparcenary. But if on the other hand, the adoption took place after the termination of the coparcenary by the death of the sole surviving coparcener, the adoption by a widow of a deceased coparcener would not have the effect of reviving the coparcenary, and could not divest the property of an heir of the sole surviving coparcener (other than the widow) or those claiming through such heir. In other words while the adoption after the termination of the coparcenary was valid it would not divest the property vested by inheritance.

But the Privy Council in *Anant* v. *Shankar*[45] rejected this view of the Bombay High Court in *Balu Sakharam's* case. It stated that adoption being valid, it could not be refused its full effect. In this case it was held that a widow's power to adopt did not come to an end by reason of the death of the sole surviving coparcener in a joint Hindu family and where she was herself the mother of the last surviving coparcener her power to adopt after his death had, as in the case of an adoption made after the death of the last surviving coparcener by the widow of a pre-deceased collateral of his, the effect of vesting the family property in the adopted son and displacing any title based merely on inheritance from the last surviving coparcener. It was further held that where the effect of the adoption by the mother of the last male owner was also to constitute the adopted son the next heir of the last male owner, the latter's separate watan property (as distinct from such watan property as he derived from his father) which had devolved upon him by inheritance as nearest reversioner from his paternal uncle, who had separated, also devolved upon the

[44] A. I. R. 1937 Bom. 279.

[45] 7o I. A. 232

adopted son, a collateral of the last male owner, in whom it had vested before the adoption being divested. The effect of this decision was that the doctrine of relation back would apply not only as regards what was joint family estate but also properties which had devolved by inheritance from a collateral. The rigour of this decision was softened by excluding the operation of the rule of relation back in so far as properties inherited from collaterals were concerned in the pronouncement of the Supreme Court of India in *Shrinivas Krishnarao Kango* v. *Narayan Devji Kango & Ors.*[46] the relevant part of which runs as under:

> "In deciding that an adopted son is entitled to divest the estate of a collateral, which had devolved by inheritance prior to his adoption, *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil* (7o I. A. 232) went far beyond what had been previously understood to be the law. It is not in consonance with the principle well established in Indian jurisprudence that an inheritance could not be in abeyance, and that the relation back of the right of an adopted son is only quoad the estate of the adoptive father. Moreover, the law as laid down therein leads to results which are highly inconvenient. When an adoption is made by a widow of either a coparcener or a separated member, then the right of the adopted son to claim properties as on the date of the death of the adoptive father by reason of the theory of relation back is subject to the limitation that alienations made prior to the date of adoption are binding on him, if they were for purposes binding on the estate. Thus, transferees from limited owners, whether they be widows or coparceners in a joint family, are amply protected. But no such safeguard exists in respect of property inherited from a collateral, because if the adopted son is entitled on the theory of relation back to divest that property, the position of the mesne holder would be that of an owner possessing a title defeasible on adoption, and the result of such

[46] (1955) S. C. R. 1 : A. I. R. 1954 S. C. 379.

adoption must be to extinguish that title and that of all persons claiming under him. The alienees from him would have no protection, as there could be no question of supporting the alienations on the ground of necessity or benefit. And if the adoption takes place long after the succession to the collateral had opened - in this case it was 41 years thereafter - and the property might have meanwhile changed hands several times, the title of the purchasers would be liable to be disturbed quite a long time after the alienations. We must hesitate to subscribe to a view of the law which leads to consequences so inconvient. The claim of the appellant to divest a vested estate rests on a legal fiction, and legal fictions should not be extended so as to lead to unjust results. We are of the opinion that the decision in *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil* in so far as it relates to properties inherited from collaterals is not sound, and that in respect of such properties the adopted son can lay no claim on the ground of relation back."

In *Venkataiah* v. *Kalyanamma*[47] the Full Bench of the Mysore High Court made a careful appraisal of the position from the original sources. Referring to the text of Manu to the effect that the adopted son did not take the family name (*Gotra*), estate (*Rikta*) of the natural father and that the funeral offerings of an adopted son ceased with respect to the natural father, they pointed out that these three could not be dissociated. Therefore, they pointed out, logically this cesser can take effect only from the date of adoption, and it would be incorrect to say that the adopted son must be deemed to have been conceived from the date of the death of the adoptive father. They also pointed out that the vow taken by a person taking a son in adoption indicated that the rights and duties of an adopted son in the natural family ceased and those in the adoptive family arose from the date of adoption.

The decision received high approbation from Derrett who termed it as a "brilliant but belated discovery".

[47] *Supra* note 41.

He said[48]:

> "It is unfortunate that the Mysore High Court discovered a way to avoid all divesting, by utterly denying the ralation back of the legal effect of adoption, just too late to be of any service, since the Supreme Court's decision overruled by implication that brilliant but belated discovery."

DOCTRINE OF RELATING BACK UNDER THE HINDU ADOPTIONS AND MAINTENANCE ACT[49]

Parliament under the HAMA intended to bring about two important changes. The first was to confer an independet power of adoption in a widow. The Objects and Reasons of HAMA stated:[5o]

> "There is no longer any justification for allowing a husband to prevent his wife from taking a child in adoption after his death. The adoption made by a Hindu widow will hereafter be in her own right."

The second change was to abolish the vexed doctrine of relation back. Section 12 of HAMA enacted that "the adopted child shall not divest any person of any estate which vested in him or her before the adoption". The academic lawyers including Derrett concluded that the doctrine of relation back - "archaic nuisance" - had been given the go-bye. But this is not to be.

In a famous epigram Maitland stated that the forms of action have been buried but they still rule from their graves. Similarly the judicial decisions have resurrected the doctrine of relation back even though it is cabined and cribbed. It continues to hold the field. But there is an important distinction between the basis of the doctrine under the Anglo-Mitakshara law and the HAMA. Under the former it emanated from the

[48] Derrett, *supra* note 26 at 78 (Footnote omitted).

[49] Hereafter referred to as *HAMA*.

[5o] *Gazette of India Extraordinary*, Part II, Sec.2, dated Aug. 23, 1956, p.739.

power of the husband to make an adoption or the lack of it in the absence of husband's authorization in a female Hindu. Under the HAMA it arises out of a different consideration, viz., to give full effect to the rights of an adopted son in the adoptive family, and to equate his position to the maximum possible extent with that of a natural born son.

TREND IN JUDICIAL DECISIONS

In *Ankush Narian Shingate* v. *Jana Bai Rama Sawat*[51] one Narayan died leaving two widows L. and T. (defendant 1) and Jana Bai, the daughter of L. and L. died in 1948. The plaintiff's case was that T. adopted him on December 2nd, 1957. The adoption deed dated December 2nd, 1957 was executed and registered. The plaintiff stated that Jana Bai took away T. on false pretensions during the absence of his natural father from his house. On December 31st, 1957, the plaintiff filed a suit for the recovery of possession of all properties left by Narayan. The trial judge held that the plaintiff was not validly adopted. The Bombay High Court allowed the appeal of the plaintiff and observed:[52]

> "In our opinion, the true effect of the provisions in sub-s.(vi) of Sec. 11 and s. 12 of the Act is that, when either of the spouses adopts a child, all the ties of the child in the family of his or her birth become completely severed, and these are all replaced by those created by the adoption in the adoptive family. *This would be so for each and all different purposes.*"[53]

The Supreme Court considered the effect of adoption under HAMA in two cases, namely *Sawan Ram* v. *Kalawanti*[54] and *Sita Bai* v. *Ram Chandra*[55]. In *Sawan Ram's* case one Raji Das

[51] (1966) 67 Bom. L. R. 864.

[52] Id. at 868.

[53] Emphasis supplied.

[54] A. I. R. 1967 S. C. 1761.

[55] A. I. R. 197o S. C. 343.

died leaving behind a widow, Smt. Bhagwani, who succeeded to his properties as a limited owner. The widow executed a mortgage over a portion of land in 1948 to Babu Ram and made a gift of the house and land measuring about 5o bighas to her grand-niece, Kalawanti in 1949. Sawan Ram, a collateral of her husband, instituted a suit for a declaration that both these alienations were not binding upon him. The suit was decreed. Bhagwani appealed against the decree and during the pendency of the appeal, adopted Deep Chand, son of Kalawanti, in August, 1959. On Bhagwani's death the question arose whether the reversioner Sawan Ram was entitled to succeed in preference to the adopted son. The Supreme Court held that the adopted son was entitled to succeed. The Court rejected the view expressed by the Andhra Pradesh High Court in *N. Hanumanta Rao* v. *N. Hanumayya*[56] that section 12 of HAMA had the effect of abrogating the ordinary rule of Mitakshara law that as a result of adoption made by a widow, the adoptee acquired rights to the shares of his deceased adoptive father which had passed by survivorship of his father's brothers. Bhargava, J. stated:[57]

> "It is well recognized that, after a female is married, she belongs to the family of her husband. The child adopted by her must also, therefore, belong to the same family. On adoption by a widow, therefore, the adopted son is deemed to be a member of the family of the deceased husband of the widow. Further still he loses all his rights in the family of his birth and those rights are replaced by the rights created by the adoption in the adoptive family. The right, which the child had, to succeed to the property by virtue of being the son of his natural father, in the family of his birth is, thus, clearly to be replaced by similar rights in the adoptive family, and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son of the deceased husband of the widow, or the married female, taking him in adoption."

[56] (1964) 1 And. W. R. 156.

[57] A. I. R. 1967 S. C. 1761, 1765.

For this conclusion the Court relied on the language of section 5 of HAMA which referred to adoption "by or to a Hindu" and of section 12 which stated that "the adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption". They, however, upheld the decision of the Andhra Pradesh High Court on the basis of section 12 (c) of the Act. Referring to section 12 (c), it was observed:[58] "It appears that in making such a provision the Act has narrowed down the rights of an adopted child as compared to the rights of a child born posthumously".

The above view of the Supreme Court finds a reiteration in *Sita Bai* v. *Ram Chandra*.[59] In that case two brothers Dulichand and Bhagirath constituted a Mitakshara coparcenary. Bhagirath pre-deceased his elder brother in 1930. Sita Bai, the widow of Bhagirath (the plaintiff in the case) was living with Dulichand as a result of which connection an illegitimate child, Ram Chandra, was born in 1936. Dulichand died on March 13, 1958. Sometime before his death, Sita Bai adopted Suresh Chandra and an adoption deed was executed on March 4, 1958. After the death of Dulichand, Ram Chandra took possession of the joint family properties. Suresh Chandra filed a suit for the recovery of properties. Ram Chandra contested the suit on the ground that the land was re-settled on him and the house passed to him entirely under the will executed by Dulichand. The trial court decreed the plaintiff's suit. The District Judge was of the view that the will executed by Dulichand was valid in so far as his half share in the house was concerned. The High Court reversed the decree of the lower courts on the view that Suresh Chandra became the son of the plaintiff from the date of adoption and did not obtain any coparcenary rights. The Supreme Court reversed the decision of the High Court on this point. It stated:[60]

[58] Ibid.

[59] *Supra* note 55.

[60] Id. at 348.

"The true effect and interpretation of sections 11 and 12 of the Act No. 78 of 1956 therefore is that when either of the spouses adopts a child, all the ties of the child in the family of her birth become completely severed and these are all replaced by those created by the adoption in the adoptive family. In other words the result of adoption by either spouse is that the adoptive child becomes the child of both the spouses. This view is borne out by the decision of the Bombay High Court in *Ankush Narain* v. *Jana Bai Rama Sawat* 67 Bom. L. R. 864. It follows that in the present case plaintiff No. 2, Suresh Chandra when he was adopted by Bhagirath's widow, became the adopted son of both of the widow and her deceased husband Bhagirath and therefore, became a coparcener with Dulichand in the joint family properties".

Following the decision of the Supreme Court in *Sita Bai's* case, the Gujarat High Court held in *Bai Chanchal* v. *Mani Shankar*[61] that an adopted son could recover his share from the hands of a sole surviving coparcener, a position that was well-anticipated by Derrett in an article in the Bombay Law Reporter.[62] There Derrett stated that "the orthodox traditional adoption continues, alongside new varieties of adoption all of which are secular". Thus, inspite of the commendable effort of the legislature to simplify the law, there are important aspects on which the judicial and legislative policies need clarification.

The foregoing account reveals that initially under the Hindu law the institution of adoption arose to fulfil secular needs and only in later times the religious aspect was given emphasis. The Dravidian form of adoption indicates that the legal severance from natal family need not be a necessary corollary of an adoption. These varied aspects will certainly be useful to the legislature when considering the extension of the institution of adoption to other communities. Derrett's writings illuminate many a dark corner in the ancient and modern Hindu law of adoption and his contributions are lasting and substantial.

61 (1971) 12 Guj. L. R. 576.

62 (1971) Bom. L. Rep. (J) 32 at 34.

EVOLUTION OF HINDU LAW OF MARRIAGE: FROM SACRAMENTAL MARRIAGE TO BREAKDOWN-DIVORCE

Paras Diwan

Hindu have, perhaps from the very beginning of their civilization, regarded marriage as a sacrament, as a tie which once tied cannot be untied. The Hindu notion of sacramental marriage differs from the Christian inasmuch as the Hindus regard their marriage not merely a sacrosanct and inviolable union, but also an eternal union - a union which subsists not merely during this life but for all lives to come. Derrett puts it succinctly thus, "the intention of the sacrament is to make the husband and wife one, physically and psychically, for secular and spiritual purposes, for this life and for after-lives."[1] The great Hindu sage Manu declared:

> The husband is declared to be one with the wife. Neither by sale nor by repudiation is a wife released from her husband. Once only a maiden is given in marriage.[2]

The injunction is:

> May mutual fidelity continue till death.[3]

1 J. Duncan M. Derrett, *A Critique of Modern Hindu Law*, Bombay, 197o, p. 287.

2 *Manusmriti*, IX, 48.

3 *Manusmriti*, IX, 1o2.

Marriage is an essential *samskar* for all Hindus. Every Hindu is enjoined to marry, to enter the *grihasta-ashrama*.[4] Manu declared:

> To be mothers were women created and to be father men, the *Vedas* ordain that *dharma* must be practised by man together with his wife. He only is a perfect man who consists of his wife, himself and his offspring.[5]

Husband and wife are enjoined to live in perpetual love, bliss and happiness. A passage in *Rig Ved* runs:

> Be thou (wife) mother of heroic children, devoted to Gods, be thou queen in thy father-in-law's household. May all Gods unite the hearts of us two into one.[6]

[4] The Hindus have divided human life into four *ashramas* or stages, first is the *brahmacharya ashrama* (studentship), the second the *grihasta ashrama* (life of householder), the third the *vanaprastha ashrama* (life of a recluse) and the last is *sanyasa ashrama* (the life of renunciation).

[5] *Manusmriti* IX, 96.

[6] *Rig Veda*, IX, 85. The *Atharva Veda* enjoins that the husband and wife should live in love just as the birds *chakva* and *chakvi* live. (According to Hindu mythology this species of birds is an ideal of life. The male and female birds live together and if one dies, the other also dies of heart-break.) (*Atharva Veda*, XVI, 2.64). A passage in *Yajur Veda* runs: For knowledge, wealth, power, food and fame and activity and issue, they (husband and wife) should try; he is the *samrat* (endowed with virtue and power), she is *swarat* (self-controlled and knowing), protecting each other. They should together make progress (*Yajur Veda*, 13.55). At the time of ceremony of marriage, when the bridegroom holds the hand of the bride, he says to her, "I hold your hand for *saubhagya* (good luck), that you may grow old with me, your husband; you are given to me by the just, the creator, the wise, and by these learned persons." (*Manusmriti*, VIII, 227). The wife is enjoined to be *putunuvarte*, i.e. she must follow the same principles as does her husband. On taking the seventh step of marriage (*saptapadi*, i.e. taking seven steps, is an essential ceremony for Hindu marriages), the husband tells his wife, *inter alia*, "Be, thou my life-mate as we walk up seven steps together, thus thou go together with me for ever and for ever ..."

The wife is not just *patni* (wife) but *dharmapatni* (partner in the performances of duties, spiritual, religious and other). Among the Hindus, there are many *yagnas* (religious and spiritual sacrifices, rites and ceremonies) which a man without a wife cannot perform. That is why a wife is called *dharmapatni*.[7] She is *ardhangini*, half her husband.[8] The concept of the unity of personality in Hindu law is at higher plane, because a wife is not merely the source of *artha* and *kama* but also of *dharma* and *moksha*. The *Vedas* have ordained that *dharma* must be practised by man together with his wife.[9] According to the *Vedas* marriage is a union of "bones with bones, flesh with flesh and skin with skin, the husband and wife become as if they were one person."[10] In the *Dharmashastras*, the husband is referred to by several designations. He is known as *bhartri*, because he is to support his wife; he is known as *pati*, because he is to protect her. Similarly, wife has several names. She is called *jaya*, because one's own self is begotten on her. She is *grihini*, the lady of the house, *sachiva*, wise counseller, *sakhi*, confidante;

[7] Thus Manu declared that the due performance of the religious rites, faithful worship, performances of *yagnas*, the highest conjugal happiness, and the heavenly bliss for ancestors and oneself - all depend upon the wife. (*Manusmriti*, IX, 64-68). Manu further declared that the man who has not taken a wife has not fully perfected himself, his personality is incomplete and imperfect. (*Manusmriti*, IX,45.)

[8] According to the *Shatapatha Brahmana*, "The wife is verily the half of the husband". (*Shatapatha Brahmana*, V. I, 6.1o.) The *Taittiriya Samhita* is to the same effect: "Half is she of the husband that is wife." (*Taittiriya Samhita*, III, I.2.57.)

[9] The *Grihyasutras* lay down that marriage is a spiritual union, a holy bond and therefore after *saptapadi*, the man says to his wife, "Into my will I take thy heart, thy mind shall follow mine." It is further said that those who have wives can fulfil their due obligations in this world; those that have wives truly have a family; those that have wives can lead a full life.

[10] Shyama Charam Sarkar, *Vyavastha Chandrika*, Vol. II, 48o.

she is the dearest disciple of her husband in his pursuits. She is *grihalakshmi*, *samarajvi* and *ardhangini*.[11]

Thus, Hindus conceived their marriage as a sacramental union, as a holy union, and not as a contract. For a Hindu, marriage is mandatory so that he can discharge his debt to his ancestor - the debt of begetting offspring. Marriage is also obligatory because without a wife a man cannot perform his religious and spiritual duties.

In sum, for a Hindu, the wife is not just *patni* or *grihapatni* but a *dharmapatni* and *sahadharmini*. In the words of Derrett, "In fact, in no other respect are the feelings of Hindus so acutely sensitive as when their concept of, and belief in, the importance of marriage as an institution are questioned or attacked. This is largely the work of the *Dharmashastra*, which after more than two millennia of relentless propaganda, have produced an effect which the western world unhesitatingly labels puritanical."[12]

Occasionally, one comes across a text or two which lay down that in certain circumstances a wife can give up her husband and take another - the nearest to divorce. The oft-cited text of Narada runs as under:

> Another husband is ordained for women in five calamities, namely, if the husband be unheard of, or be dead, or adopts another religious order, or be impotent, or becomes an outcaste.[13]

11 *Mahabharata, Anu. Parva*, 47, 1-13. See also the *Ramayana*, 23-24. This also means that the husband is "the Lord and master of his wife, he must be adored and obeyed even if devoid of all virtues." He must be obeyed as long as he kives and the wife should remain faithful to his memory even after his death. (*Manusmriti*, V, 147-54; *Yajnavalkyasmriti*, I, 75; *Vishnusmriti*, XXV, 13-13.)

12 *Hindu Law, Past and Present*, Calcutta, 1957, p. 82.

13 Narada, XII, 93; to the same effect is a text of Parashara, II, 27.

Similarly, there are some texts which allow the husband to renounce his wife (*tyaga*).[14] Manu laid down that a husband could abandon his wife who was blemished, afflicted with disease, or previously defiled or given to him fraudulently.[15] It would not be correct to draw inference from these texts that Hindu law allowed divorce. In the words of Radha Vinod Pal:

> It is, however, doubtful whether the text in question referred to divorce in the ordinary sense of the terms.[16]

It seems that during the *Smriti* period in some very exceptional cases wife or husband were allowed to give up each other. But the law became more rigid in the post-*smriti* period, and the marriage came to be established firmly as an indissoluble union.[17]

[14] Manu laid down that a wife who is disrespectful to the husband who is addicted to some evil passion, is a drunkard, or diseased, may be abandoned for three months and deprived of her ornaments, etc. (*Manu*, IX, 8o). Idea, probably, was that within three months she might repent and improve herself. Manu also provided for the supersession of a wife who took spirituous liquor, was of bad conduct, rebellious, diseased, mischievious or wasteful. (*Manu*, VIII, 9o); *Yajnavalkya*, I, 8o is to the same effect. Kautilya's *Arthashastra*, Ch. 72, 188 also provides for certain cases in which a marriage may be terminated.

[15] *Manu*, IX, 72; see also *Manu*, VIII, 2o5.

[16] *History of Hindu Law*, Calcutta, 1959, 58, p. 375. Kane also takes the same view (*History of Dharmashastra*, Vol. II, Part I, p. 611.) He observed, "... divorce in the ordinary sense of the word, i.e. divorce *a vinculo matrimonii* has been unknown to the *dharmaśāstras* and to the Hindu society for about two thousand years (except on the ground of custom among the lower castes). Even when the husband was allowed to abandon the wife for her lapse, still she was entitled to at least starving maintenance. Therefore, abandonment (*tyāga*) was not only no divorce *a vinculo matrimonii* at all, but was not even a divorce *a mensa et thoro* (separation form bed and board)". *History of Dharmashastra*, Vol. II, Part II, p. 62o.

[17] See Kane, *History of Dharmashastra*, Vol. II, Part I, p. 62o.

However, in several castes and sub-castes, divorce under customs has prevailed from an early Hindu period. Since customs derogatory to sacred law are allowed to prevail,[18] customary divorces have been recognised.[19] Customary modes of divorce are easy. In some cases marriage can be dissolved by mutual consent. Very little formalities for dissolving marriage are needed. In most cases, it is purely a private act of the parties. In some communities some forum is required. It is either a *gram panchayat*, community *panchayat* or family council.[20] Such has been the importance of customary divorces in Hindu law that even after the reform and codification of Hindu law of marriage, the customary divorces continue to be recognized.[21] But customary divorce has been the privilege of the lower castes; only in a very few high castes divorce by custom has been available.

In India, in the latter part of the 19th century, divorce was introduced by statute for two classes of persons: (i) those who converted to Christianity and consequent thereof their spouses refused to live with them,[22] and (ii) those who were Christians and performed Christian marriages.[23] But divorce was not yet available to the high caste Hindus some of which, under the impact of western education and contact, have enlightened views and preached social reforms, including enactment of divorce law.

Derrett has warned us that the study of matrimonial relations and matrimonial law in England was irrelevant and un-

18 *Collector of Madura v. Mootoo Ramalinga,* (1868) 12 MIA 397.

19 See Paras Diwan, *Customary Law*, Chandigarh, 1978, Chapter IX. Banerjee, Goorudas, *Law of Marriage and Stridhan,* 1st ed., Calcutta, 1879, pp. 242 ff.

20 Ibid.

21 Section 29(2), Hindu Marriage Act 1955.

22 Native Converts Marriage Dissolution Act 1866.

23 Indian Divorce Act 1869. It was also made applicable to those persons who married under the Special Marriage Act 1872.

suited to our Hindu social system. He observed that even though every one of the working papers of the English Law Commission was interesting, founded as it was on deep and comparative research, yet none of them could be relied upon for help in the Indian situation.[24] But we have not heeded to his warning, and from 1931 till this date most of our matrimonial reforms are based on, or influenced by, English matrimonial law reforms.

Although attempts of the enlightened Hindus to introduce divorce in Hindu law did not succeed at an All-India level,[25] these succeeded in an Indian State, Baroda. The Ruler of Baroda and most of those who ran the State administration were enlightened people. The Baroda Hindu Lagnaviccheda Nibandha (Hindu Dissolution of Marriage Act) was passed in 1931.[26] The Baroda reforms were influenced by the then English matrimonial law, and the Baroda Act of 1937 (the successor of the Hindu Dissolution of Marriage Act of 1931) is generally based on the Matrimonial Causes Act 1937. The dichotomy of innocence and guilt, i.e. one party guilty of a matrimonial fault and the other innocent, was maintained.[27]

[24] Derrett, *Critique of Modern Hindu Law*, Bombay, 197o, p. 293.

[25] Dr. H. S. Gour, a liberal Hindu member of the Central Legislature, introduced a Hindu Divorce Bill several times between 1928-1933 but every time the Bill was rejected.

[26] It was later on replaced by the Baroda Hindu Nibandha of 1937.

[27] Thus, either party could sue for divorce if (i) respondent's whereabouts were not known for a period of seven years or more, (ii) respondent had become a recluse, (iii) respondent had ceased to be a Hindu by conversion to another religion, (iv) respondent was guilty of cruelty, (v) respondent was addict to intoxicants for more than three years and was therefore unable to perform marital obligations, (vii) respondent had committed adultery, or (viii) respondent had married a second time during the life-time of the petitioner. The wife had three additional grounds of which she could sue for divorce, viz.,the husband (a) was impotent, (b) habitually committed an unnatural offence, or (c) refused to allow the petitioner-wife to

Although the enlightened Hindu public opinion clamoured for reforms of Hindu law, barring aside a few piecemeal reforms,[28] no reforms could be introduced till India became independent. Two provinces of India, Bombay and Madras, being unsatisfied with the pace of reform at the All-India level, passed divorce laws at the provincial level. In 1946, the Bombay Prevention of the Hindu Bigamous Marriage Act in 1946 was passed. This was, in 1947, followed by the Bombay Hindu Divorce Act 1947.[29]

27 (cont.)
stay with him for more than three years without reasonable cause. The husband, too, had two additional grounds, viz., the wife (i) was pregnant at the time of the marriage by a person other than the petitioner-husband, and the fact was unknown to him, or (ii) she failed to stay with him for more than three years without reasonable cause. The bars to matrimonial relief were also laid down. The suit for divorce would be barred, if the petitioner was (i) guilty of unreasonable delay, (ii) of collusion, (iii) in case of adultery, was guilty of cruelty or desertion before the adultery was committed by the respondent, or was guilty of conducing respondent's adultery, or (iv) wilfully lived apart from the respondent.

28 Only reforms that could be made in matrimonial law were in the forms of two statutes, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 and the Hindu Marriage (Removal of Disabilities) Act 1976. The Hindu Married Woman's Right to Separate Resident and Maitenance Act allowed the wife to live separately from her husband on certain grounds and she was also entitled to claim maintenance. This was certainly not judicial separation. Beyond this we could not go. The Hindu Marriage (Removal of Disabilities) Act 1946 permitted *Sagotra* and sub-caste marriages among the Hindus.

29 The Bombay Hindu Divorce Act 1947 contained six grounds of which husband or wife could sue for divorce. These were, impotency, seven years' lunacy, seven years' leprosy, four years' desertion, seven years' unheard absence, husband keeping a concubine or wife becoming a concubine. On the first four grounds no suit for divorce lay if husband and wife had lived married life for 2o years after attaining majority. Wife had an additional ground of divorce, viz., her husband had married again before coming into force of the Bombay Preven-

In 1949 the Madras Province and 1950 - 52 the Saurashtra State passed similar statutes.[30]

However, attempts at reforming Hindu law and introducing divorce at the All-India level continued. A breack-through was made when in 1944 the Hindu Law Reform Committee under the Chairmanship of Sir Benegal Narsing Rau was constituted.[31] The Rau Committee submitted its report in 1947 along with a draft Hindu Code Bill, which, *inter alia*, contained proposals for introducing divorce along with other matrimonial causes. Although the Committee apparently evolved a uniform Hindu Code applicable to all Hindus by blending the progressive elements of law of the various schools of Hindu law, it evoked tough opposition from the orthodox section of Hindu opinion.[32] Dr. Ambedkar as Law Minister prepared a draft code which was introduced in the interim Parliament, but such was the opposition to these reforms, inside and outside Parliament, and it cut across party lines, that by September 1951 only four clauses could be passed. In 1951 when the interim Parliament was dissolved, the Bill lapsed.

29 (cont.)

tion of the Hindu Bigamous Marriage Act 1946 and such wife was living at the time of the institution of the suit for divorce. Judicial separation was also available under the Act on five grounds.

30 The grounds of divorce in these statutes were different. Thus five years' leprosy, five years' lunacy, conversion from Hinduism, and cruelty were made grounds of divorce, in addition to the ground of husband keeping a concubine or wife becoming a concubine. Ancillary relief were also introduced. Following English judicial practices the Bombay Act laid down the limit of alimony *pendente lite* as one fifth of the husband's net income.

31 In 1941 was appointed a Hindu Law Committee with a reference to look into, and make recommendation for, reforms and codifications of Hindu Law. The Committee recommended for the codification of Hindu Law in gradual stages. But the Committee's Report was not considered satisfactory.

32 Even when the Rau Committee toured India to collect public opinion at several places black flag, and at some places violent, demonstrations were held.

The Hindu law reforms were then, between 1954-56, introduced in the First Parliament of free India, not in the shape of one Hindu Code but in the form of separate Bills covering five areas of Hindu law, marriage and divorce, succession, adoption, maintenance, and minority and guardianship.[33] The rest of Hindu law is still uncodified and retains all the pre-independence features.

When the Rau's Draft Code was drafted, the English Matrimonial Causes Act of 1955 was not available to us. But when the Special Marriage Bill 1954 and the Hindu Marriage and Divorce Bill 1955 were introduced, this knowledge as well as the knowledge of other reforms in western countries including the Soviet Union was copiously available to us, and we made use of this source material freely, though we retained some of our traditional views and conservatism blending them with the western models so as to suit to our requirements. In the words of Radhakrishnan :

> To survive we need a revolution in our thoughts and outlook. From the altar of the past we should take the living fire and not the dead ashes. Let us remember that past, be alive to the present and create future with courage in our hearts and faith in ourselves.[34]

Further, in the words of the Law Commission :

> Hindu law was never static; it was dynamic and was changing from time to time. The structure of any society, which wants to be strong, homogenous and progressive, must, no doubt, be steady but not static; stable but not stationary; and that is exactly the picture we get if we study the development of Hindu law carefully before the British rule in India.[35]

[33] Hindu Marriage Act 1955; Hindu Succession Act 1956; Hindu Minority and Guardianship Act 1956; Hindu Adoptions and Maitenance Act 1956.

[34] Quoted by the Law Commission in its *59th Report*, 7.

[35] Law Commission, *Fifty-Ninth Report*, 7 (1974).

In matters of law reforms, for the "revolution of thoughts", we have been mostly looking at the English law. Yet in our reforms of matrimonial law we display a unique conservatism; the feeling, the psychosis is that Hindus are still a very conservative people and would not tolerate any rapid or radical reforms. This feeling pervades the provisions of Hindu Marriage Act 1955. In the Hindu Marriage Act we have founded divorce law on the guilt-theory, blending it with our traditional conservatism. In our 1955 law the three English traditional guilt grounds, viz., adultery, desertion and cruelty were not made grounds of divorce but of judicial separation.[36] Not "adultery" but "living in adultery" was made a ground of divorce.[37] After the amendment of 1976, adultery, cruelty and desertion are grounds of divorce as well as judicial separation.[38] In the 1955 law virulent leprosy, incurable and continuous insanity, and veneral diseases (all at least of three years' duration) were made grounds of divorce.[39] The 1976 amendments have deleted the period from all the three grounds and have reworded 'incurable and continuous insanity' in a manner which brings it at par with English law.[40] The ground as worded runs : the respondent has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.[41] Con-

[36] Section 10 of the Hindu Marriage Act 1955 before the 1976 amendments.

[37] Section 13(1)(i) of the Hindu Marriage Act 1955 before the amendment of 1976

[38] Marriage Laws (Amendment) Act 1976, Section 7.

[39] Clauses (iii), (iv) and (v) of Section 13(1), Hindu Marriage Act 1955, before 1976 amendments.

[40] We have borrowed it from the English Matrimonial Causes Act 1973.

[41] In explanation to the Clause, the definitions of 'mental disorder' and 'psychopathic disorder' have been borrowed from the English Statute, Mental Health Act 1959, Clauses (1) and (4) of Section 4.

version to another religion and renunciation of the world[42] as grounds of divorce are to be looked at in the typical background of Hindu society. Whereabouts of respondent are not heard for a period of seven years (or presumption of death)[43] is included as a ground of divorce in Section 13 (1), Hindu Marriage Act. It has been treated separately in English law.[44] In the original Act the eighth and ninth grounds of divorce were also worded as fault grounds: non-compliance with a decree of restitution of conjugal rights for a period of two years or more by the respondent, or non-resumption of cohabitation by the respondent for a period of two years or more after the passing of the decree of judicial separation entitled the petitioner to sue for divorce.[45] These were the nine grounds for divorce under the original provisions of Hindu Marriage Act 1955.

The Hindu Marriage Act 1955 enacts additional grounds of divorce on which a wife alone can sue for divorce. The pre-Act polygamous marriage of the husband entitles any wife to sue for divorce provided the other wife (or wives) of the husband is alive at the time of filing of the petition.[46] The other ground is rape, sodomy or bestiality of the husband.[47] The Marriage Laws (Amendment) Act 1976 has enacted two additional fault grounds for the wife: if a maintenance order has been passed in favour of the wife under the Section 18, Hindu Adoptions and Maintenance Act 1956 or Section 125 of the Code of Criminal Procedure 1973 and since then cohabita-

[42] Clauses (ii) and (vi) of Section 13(-), Hindu Marriage Act.

[43] Clause (vii) of Section 13(1), Hindu Marriage Act.

[44] See English Statute, Matrimonial Causes Act 1973, Section 19(1).

[45] Clauses (viii) and (ix) of Section 13(1), Hindu Marriage Act. These seems to have been influenced by the divorce law of the States of South Australia and New South Wales.

[46] Section 13(2)(i), Hindu Marriage Act 1955.

[47] Section 13(2)(ii), Hindu Marriage Act 1955.

tion has not been resumed for one year or upward,[48] the wife may sue for divorce. The other additional ground is that the marriage of the wife was solemnized before she was fifteen years[49] and that she repudiated the marriage after she attained the age of 15 years but before attaining the age of eighteen years, irrespective of the fact whether the marriage was consummated or not before repudiation.[5o] The child marriages continue to be valid under Hindu law. Even in 1976 we could not lay down that the child marriage is void or voidable (it is a valid marriage under Hindu law), but we have given the aforesaid relief to the child-wife; no relief is still provided to the child-husband.

The other aspect of the fault theory, i.e. the petitioner should be an innocent party has been enacted in Section 23, Hindu Marriage Act. Although we were aware that under English matrimonial law some bars to matrimonial relief were absolute and others were discretionary, we, adhering to our conservative stance, made all bars absolute bars. Thus we have enacted the doctrine of strict proof, taking advantage of one's own wrong or disability (after the reforms of 1976 this bar does not apply when petition is on the ground of respondent's insanity), accessory, connivance, condonation, collusion, improper delay, and a residuary bar, viz., any other legal ground on which relief may be refused.[51] Our courts have ap-

[48] Now it is sub-clause (iii) of Section 13(2), Hindu Marriage Act.

[49] Section 5, Hindu Marriage Act after the amendment of 1978 lays down that the bride should not be less 18 years of age and the bridegroom should not be less than 21 years of age at the time of marriage, but so wide-spread is the phenomenon of child marriages that we still do not lay down that such marriages are void or voidable; such marriages are valid.

[5o] Section 13(2)(iv), Hindu Marriage Act. This is based on an analogous provision of the Dissolution of Muslim Marriages Act 1939, Section 13(vii), but under this provision it is essential to show that the marriage was not consummated before repudiation.

[51] Section 23(1).

plied these bars with the same rigidity with which the English judge applied them in the late nineteenth and early twentieth century.[52]

Keeping up with our conservatism we did not enact divorce by mutual consent in the Hindu Marriage Act 1955, though we did enact it as a basis of divorce a year earlier, in the Special Marriage Act 1954[53] which provides facility of a civil marriage to "any two persons", i.e. belonging to any community, religion, nationality, or domicile. The Special Marriage Act 1954 was enacted for the educated, sophisticated and enlightened urban-based gentlemen and ladies, while the Hindu Marriage Act 1955 was meant for the vast Hindu masses also who still nurtured and cherished Hindu orthodoxy. But in 1976 we thought that it was safe to introduce divorce by mutual consent for Hindus, too. Now divorce by mutual consent can be obtained if in their joint petition, husband and wife show that they have been living separately for a period of one year, that they have not been able to live together, and that they have mutually agreed to live separately.[54] With a view to avoiding hasty divorces, it has been laid down that after presentation of the petition the parties have to wait for six months (though not more than 18 months) and then to move a motion in the court that their marriage be dissolved. The court will grant them divorce only on being satisfied, after hearing the parties and after making such enquiry so it thinks fit that a marriage has been solemnized and the averments in the petition are true. A

[52] The latest instance is the Supreme Court decision in *Dastane* v. *Dastane*, AIR 1975 SC 1534 where a mentally deranged wife nagged her husband to the extent of amounting worst mental torture and physical discomforture, yet the Supreme Court refused to grant the relief, as the wife has delivered a child a few months before the presentation of the petition - treating it as amounting to condonation.

[53] Section 34.

[54] Section 13B, Hindu Marriage Act.

special bar to the relief is also enacted: the court has to be satisfied that the consent of either party has not been obtained by force, fraud or undue influence.[55]

In 1955 we were aware of Mrs. Eireme White's Bill which stipulated divorce on breakdown principle, but we were, obviously, not familiar with Mr. Abse's 1963 Bill and Mr. Parker's 1965 Bill introduced in Parliament for the same purpose. In 1956 the Royal Commission on Marriage and Divorce submitted its Report.[56] Chairman Lord Morton and eight other members of the Commission expressed their opposition to divorce on breakdown. Nine other members of the Commission were of the view that the traditional fault grounds should be retained but divorce on the ground of breakdown of marriage should also be made available to some limited extent. (That is what we did by the Hindu Marriage (Amendment) Act 1964). The 19th member of the Commission, Lord Walker expressed his views against both the divorce on fault grounds and divorce by mutual consent and recommended that "dissolution on breakdown should be the sole mode of ending the marriage tie."[57] We were also familiar with the matrimonial law of South Australia which provided that if a decree of restitution of conjugal rights was not complied with for a period of three years, either party might seek divorce. A similar provision existed in the matrimonial law of the State of New South Wales, though no period of non-compliance with the decree was laid down. The Matrimonial Causes Act 1959 of the Commonwealth of Australia provides that, *inter alia*, either party may sue for divorce if a decree for restitution of conjugal rights is not complied with for a period of one year. Under the Swedish Marriage Law of 192o, apart from divorce on the ground of "profound and lasting disruption", divorce could also be obtained by either party on the ground

[55] Section 23(1)(aa), Hindu Marriage Act.

[56] *Report* 1951-56, Cmd. (1678).

[57] Ten years later the *Report* of the Archbishop of Canterbury's group, published under the title "Putting Asunder" (1966) made the similar recommendation.

of non-resumption of cohabitation for a period of one year after the passing of decree of judicial separation.[58] In 1964, armed with this knowledge of comparative law, on a private member's Bill, two breakdown grounds were introduced in the Hindu matrimonial law without any ado and without much discussion. This was done by modifying the last two clauses of Section 13 (1), Hindu Marriage Act 1955. In their place, a new clause, Clause (1A) to Section 13 of Hindu Marriage Act was added. The new clause lays down :

> Either party to marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground -
>
> (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties, or
>
> (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

The 1976 amendments have reduced the period of two years to one year in both the Clauses.[59]

The fundamental assumption of the breakdown principle of divorce is that either party can sue for divorce, irrespective of the fact that one or both the parties are guilty of some or other matrimonial offence. The dichotomy of innocence and fault is rendered redundant. Divorce is regarded no longer as a reward for marital virtue on the one side, and a penalty for

[58] The State of New Zealand and some States of the United States, too, have similar provisions.

[59] Marriage Law (Amendment) Act 1976, Section 7(b).

marital delinquency on the other, but a defeat for both, a failure of the marital "two-in-oneship",[60] and if marriage has irretrievably broken-down, then it is better that the empty shell is destroyed "with maximum fairness and minimum bitterness, distress and humiliation."[61] But the Indian amendments of 1964 introduced the breakdown divorce in the existing framework of the fault theory, and when the provisions came for interpretation, our courts looked at it in the dichotomy of fault and innocence.

In some early cases the facts were more or less these: the wife obtained a decree of divorce and the husband filed a petition for divorce after the lapse of the statutory period. It was established that the husband did not either make any effort to comply with the decree, or, in fact, refused entry to the wife when she knocked at his door. The courts refused to grant the petition as, in their view, it would amount to giving him advantage of his own wrong within the meaning of Section 23 (1) (a), Hindu Marriage Act 1955 (wrong being the non-compliance with the decree).[62] Derrett approved of these decisions as he felt that otherwise there would be "an enormous increase in insincere petitions for restitution."[63] In later decisions our courts modified their position.[64]

60 *Putting Asunder: A Divorce Law for Contemporary Society,* 2o (1966).

61 Report of the Law Commission, 15 (1966).

62 *Chaman Lal* v *Mohinder Devi,* AIR 1968 P & H 237; *Syal v. Syal,* AIR 1968 P & H 489; *Laxmibai* v. *Laxmi Chand,* AIR 1968 Bom 332; *Someshwar* v. *Leelavati,* AIR 1968 Mys 274.

63 Derrett, *A Critique of Modern Hindu Law,* p. 36o. See author's work, *Modern Hindu Law: Codified and Uncodified* (5th ed.), 146-147 (1981). See also V. S. Deshpande, "Divorce under the Hindu Marriage Act - A Conflict of Principles" , AIR 1971 (Journal) 113-118, where the learned author (who was then a judge of the Delhi High Court) has made suggestion for harmonious interpretation of Section 13 (IA) and Section 23(1)(a), Hindu Marriage Act.

64 See *Madhulkar* v. *Sarla,* AIR 1973 Bom 55; *Bai Mani* v. *Jayanti Lal* AIR 1979 Guj 2o9.

In *Bimla* v. *Bakhtawar*,[65] it was held that mere non-compliance with the decree of restitution of conjugal rights or a mere disinclination to agree to an offer of reunion did not amount to a wrong disentitling the petitioner to the relief. This view has been confirmed by the Supreme Court.[66]

After 1964, the English matrimonial law advanced rapidly towards divorce on the ground of breakdown of marriage. In 1966 the Mortimer Committee (appointed by the Archbishop of Canterbury in 1964) submitted its Report and recommended that irretrievable breakdown of marriage should be the sole ground of divorce. The Report gave the following definition of breakdown of marriage: "... such failure in the matrimonial relationship or such circumstances adverse to that relationship or such circumstances adverse to that relationship that no reasonable probability remains of the spouses again living together as husband and wife for mutual comfort and support."[67] A little later the English Law Commission submitted its Report and recommended, inter alia, the introduction of breakdown of marriage as a ground of divorce.[68] In 1969 the Divorce Law Reform Act was passed which laid down five criteria of breakdown of marriage, the last one is five years' living

[65] AIR 1977 P & H 69 FB; a Full Bench of the Punjab and Haryana High Court over-ruling its earlier decisions (the first two cases listed in the footnote no. 59).

[66] *Dharmendra* v. *Usha*, AIR 1977 SC 2218: this was a case where divorce was sought on the ground of non-resumption of cohabitation after a decree for judicial separation was passed.

[67] *Putting Asunder*, 2o (1966).

[68] In fact the Law Commission put-forth three proposals: (a) breakdown without inquest, i.e. breakdown of marriage as evidenced by six months' separation; (b) divorce by consent; and (c) divorce of the ground of separation: under this head a shorter period of separation, say, two years, was suggested, provided the other party consented to divorce, and a longer period of separation, say, five to seven years, was suggested where either party could seek divorce, irrespective of the fact whether the other party consented or did not consent.

apart by the spouses.[69] Some bars have also been enacted. Thus a petition for divorce on the ground of five years separation may be opposed by the respondent "on the ground that the dissolution of marriage will result in grave financial or other hardship to him and it would in all circumstances be wrong to dissolve the marriage."[70] In deciding this question, the court shall consider all the circumstances, including the conduct of the parties to the marriage, and the interest of those parties and interest of any children or other persons concerned.[71]

We also came to know that in 1966 the Commonwealth of Australia and in 1968 the Dominion of Canada also introduced divorce on breakdown grounds. Under the law of the former five years' continuous living separate and apart by the spouses was considered to be sufficient evidence of breakdown of marriage, provided there was not likelihood of cohabitation being resumed.[72] Under the Canadian law the period of separation is three years.[73] We were also aware of the Soviet Family Law of 1944 and 1968 and the West German Law of 1946 which also recognize the breakdown of marriage as a ground of divorce. Under the Soviet Law, the determination of an irretrievable breakdown of marriage in each individual case is left to the court. Under the law of the latter, if the domestic community of the spouses has ceased to exist for three years and where by vir-

[69] The other four criteria are: such adultery of the respondent on account of which the petitioner finds it impossible to live with the respondent; such behaviour of the respondent that petitioner cannot reasonably be expected to live with the respondent (cruelty); two years desertion: and two years' living apart of the spouses provided the respondent consented. Section 2 of the Divorce Reform Act 1969, now Section 2 of the Matrimonial Causes Act 1973 which has replaced the Divorce Law Reform Act 1969.

[70] Section 5(1), Matrimonial Causes Act 1973.

[71] Section 5(2), ibid.

[72] Section 28(m), Matrimonial Causes Acts 19591-66.

[73] Section 4, Divorce Act 1968.

tue of the deep-seated and irretrievable disruption of the matrimonial relationship, the restitution of community of life corresponding to the nature of marriage cannot be expected, either spouse may apply for divorce.[74]

With this knowledge of comparative law, when in 1980 our Law Commission submitted its 71st Report it chose to rely on the English matrimonial law rather than on any other system of law, though as to the period of separation it preferred the Canadian matrimonial law. The Commission has not recommended that the existing fault grounds of divorce by mutual consent should be abolished, rather it has recommended the introduction of breakdown ground along with the existing grounds. The Iaw Commission's formulation of breakdown ground is as under:

> (1) A petition for the dissolution of a marriage by a decree of divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.
>
> (2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.
>
> (3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.
>
> (4) In considering for the purpose of sub-section (2) whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding "three months" in all) during which the parties resumed living with each other, but no period during which the parties lived with each

74 Section 48, West German Marriage Act 1946.

other shall count as part of the period for which the parties to the amrriage lived apart.

(5) For the puposes of sub-sections (2) and (4) a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be constructed as references to their living with each other in the same household.

Following the English law[75] the bar to matrimonial relief on the ground of irretrievable breakdown of marriage is recommended as under :

(1) Where the wife is the respondent to a petition for the dissolution of a marriage by decree of divorce on the ground of irretrievable breakdown of marriage, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by a virtue of this provision, then -

(a) if the court finds that the petitioner is entitled to rely on the irretrievable breakdown of marriage, and

(b) if apart from this provision the court would grant a decree on the petition,

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned and if the court is of opinion that the dissolution of the marriage will result in grave financial hardship of the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the

[75] Section 5 of the Matrimonial Causes Act 1973. In fact, most of the language of Section 5 has been substantially adopted.

proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Again, following English law[76] another bar is recommended as under :

(1) the court shall not pass a decree of divorce on the ground of irretrievable breakdown of marriage unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage referred to in sub-section (2) has been made consistently with the financial capacity of the parties to the marriage.

(2) this section shall aply to -

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.

The Law Commission has also recommended that Section 23 (1) (a), Hindu Marriage Act should not apply to the breakdown principle. According to the Law Commission, it is desirable that the petition on the ground of irretrievable breakdown of marriage would be excluded from the scope of Section 23 (1) (a). The Commission added, once divorce is decided, to be granted on the basis of irretrievable breakdown of the marriage, any allegation that the fault of a party contributed to the conditions leading to the breakdown should be regarded as irrelevant.

The recommendation of the Law Commission have been accepted by the Government of India and a Bill is pending introduction into Parliament. When the 1976 reforms were enacted, J. Duncan M. Derrett wrote his book, "Death of a Marriage Law", he may have got a feeling that probably the Hindu marriage law has been

[76] Section 41, Matrimonial Causes Act 1973.

cremated. But beneath the surface of modernization, a process started by Prime Minister Nehru and continued since then, the current of the ancient Hindu values continues to flow. There are certain values which every Hindu cherishes and so long as Hindu live on, these values will endure, even when divorce on fault grounds, by mutual consent or on breakdown of marriage is accepted widely by us.[77] This fact of the Hindu way of life is as much known to Derrett as to us.

[77] We do not yet have many divorce cases, and most of these are confined to metropolitan cities.

SCHEDULED CASTES: A HINDU LAW PERSPECTIVE

B.N. Sampath

I.

The hierarchial division of any society is a sociological fact, but what distinguishes Hindu society from any other society is the petrifaction of the pattern, a result of the interaction of socio-legal forces[1] during the last several millenia promoting the continuation of these divisions. Whereas the sociologists are contented with the microanalysis of the various facets of the caste system in its present form and the projection of the various problems, it is left to jurists to suggest solutions to these problems. The castes, as they exist to-day, have lost their significance so far as the general law is concerned and more particularly with respect to Hindu law. There is no gainsaying the fact that shastric law discriminated people according to their castes in general and invidiously. with reference to criminal law.[2] With the introduction of Muslim law to this country and the subsequent codification of Criminal law, the Hindu Criminal law lost its validity and relevance. However, the shastric law continued to distinguish peo-

[1] Whereas legal systems elsewhere have remained neutral in the struggle of various societal groups for establishing their hierarchial primacy, the shastric law played an active role in the promotion of caste divisions and their preservation.

[2] Hindu Criminal law prescribed graded punishments on the basis of the caste of the offender, the severest punishment being reserved to a Shudra. See P.N. Sen, *Hindu Jurisprudence* (T.L.L.) 1918, 345-349 for his apologetic observations.

ple according to their castes in certain areas[3] until the codification of Hindu law in 1955 and 1956. Hindu law enactments have by one stroke done away with all these caste distinctions.[4] It is significant that the inclusive definition of the term Hindu while bringing all the dissenters from Hinduism[5] within its ambit also comprises the Scheduled Castes, the notable exception being the Scheduled Tribes to whom these enactments are not applicable.[6]

The proliferation of Hindu castes and their gradation are the outcome of a long, complex social process which cannot en-

[3] On account of the low ritual status of the Shudra, shastric law exempted him from the requirement of strict observance of ceremonies especially in marriage and adoption. For instance, the *datta homa* was dispensed with in the case of a Shudra. See also the law relating to the rights of a Shudra's illegitimate son with respect to his father's property.

[4] At least theoretically a Hindu of any caste can contract a marriage with a Hindu of any other caste and so is the case with adoption. See Sec. 5 of the Hindu Marriage Act 1955, Sections 7, 8 and 10 of the Hindu Adoption and Maintenance Act 1956.

[5] Section 2 of the Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956, Hindu Succession Act 1956 and Sec.3 of the Hindu Minority and Guardianship Act 1956.

[6] See Section 2 (2) of the Hindu Marriage Act 1955 and other Acts referred in foot note 5 and Section 3 (2) of the Hindu Minority and Guardianship Act 1956. The obvious reason for exempting the Scheduled Tribes from the application of these enactments is that many of these tribes have little in common with the traditional Hindu society even though some of them exhibit various stages of 'Hinduization'. However, the discretion has been vested with the Central Government, for including any of these tribes within the term Hindu.

gage our attention in this paper.[7] However, we have to notice that in the caste hierarchy there are many castes which fall in the lowest rung against whom the rest of the community heaped all kinds of indignities and disabilities resulting in human suffering unparalleled in the annals of history. Though the pathetic conditions of these communities did move the British Government to formulate a policy for their social uplift, it was left to the independent India to take up their cause as a criterion for national progress and provide massive state patronage for their social and economic emancipation. The immediate task before the framers of the Indian Constitution was to identify these classes for the purpose of conferring state benefits and in pursuance to that they recognized two classes which needed special attention. Those groups which fell within the framework of the traditional Hindu society and suffered considerable indignities at the hands of the rest of the community were designated as "Scheduled Castes". But those who were outside the pale of the Hindu society or were on the fringes of that society having minimal social contact and were thus spared the indignities heaped against the earlier group but whose social progress[8] deserved attention were designated as "Scheduled Tribes". It needs to be emphasized here that the "Scheduled Castes" are castes of the Hindu society[9] which have been so designated

[7] The caste system is a unique socio-anthropological phenomenon presenting fascinating material to social scientists. We have briefly stated the genesis of mixed castes with special emphasis on lower castes as indicated in the Shastras.

[8] "Social progress" is again a controversial idea in relation to these tribes because what we deem to be "social progress" may not be progress intrinsically.

[9] The judicial logic is, at times, incomprehensible. In *State of Kerala* v. *N.M. Thomas* A.I.R. 1976 S.C. 490, 535 Krishna Iyer, J., observes "we may clear the clog of Art. 16 (2) as it stems from a confusion about *caste* in the terminology of "Scheduled Castes" and "Scheduled Tribes". This latter expression has been defined in Arts. 341

for the purpose of extending preferential treatment. The constitutional fiat has been given effect to by making reservations in legislatures, educational institutions, governmental and quasi-governmental service recruitment and extending succour in every conceivable form.[10] It is interesting to observe that if the dehumanising attitude of the upper castes towards these communities for centuries had no parallel in history, the massive programme undertaken by the government for ameliorating their conditions is also equally unique. It has, however, acquired recently such political overtones that each political party is trying to outdo the other in extending concessions to these communities without realizing the long range implications of their actions on the nation. Indeed, it has already generated resentment among the vast masses of caste Hindus who have started viewing the concessions as instances of 'reverse discrimination' rather than as 'protective reservation'. Further, the irony of the situation is that the upper caste Hindus have started thinking of the 'Scheduled Castes and the Scheduled Tribes' as a privileged class by naming them sarcastically as 'Government Brahmins' and have begun to aspire for their privileges.[11]

9 (cont.)

and 342. A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President." It is respectfully submitted that the remarks of the learned judge are mere rhetoric having no basis in shastric or sociological materials. See for Comments on *Thomas'* case, Parmanand Singh, " 'Equal Opportunity' and 'Compensatory Discrimination' ", in Constitutional Policy and Judicial Control. 18 (1976),J.I.L.I. 300.

10 Land has been given and houses have been constructed free. Loans have been granted by banks without interest and often they have been written off.

11 *Khazan Singh* v. *Union of India* A.I.R. 1980 Delhi 60 is an example.

The cases involving the reservations in favour of the Scheduled Castes and the Scheduled Tribes have come up in various forms before the courts and basically they fall within the province of constitutional law with which we are not concerned in this paper. It is, however, in the area where constitutional law and Hindu law intersect that we are interested. An attempt is made in this paper to examine the shastric roots of the 'Scheduled Castes' with a view to dispel certain misconceptions[12] and examine the problems in this area from the perspective of Hindu law and assess the implications of some judicial decisions.

II.

The texts of the Purushasukta[13] and the Gita[14] referring to the genesis of the four castes and the basis of their classification have become a cliche both in writings and confabulations. These texts do not in any way reflect the existing state[15] of the Hindu society. However, they are significant because they throw light on the earliest stage of Hindu so-

[12] See foot note 9 for the view of Krishna Iyer, J. See also *Armugham* v *Rajagopal* A.I.R. 1976 S.C. 939 for the remarks of Bhagwati, J., which we have refuted later on.

[13] *Rig Veda* X, 90, 12; Manu I, 31 reflects the same idea.

[14] "The four Varnas (namely, the Brahmana, Kshatriya, Vaishya and Shudra) have been created by me according to their *Guna* and *Karma.*" *Gita* IV, 13.

[15] Kapur, J., in his dissenting opinion in *V.V. Giri* v. *Suri Dora* A.I.R. 1959 S.C. 1318, 1330-31 has made some interesting observations about the caste system. He states "A question of importance has been raised as to whether a member of Scheduled Caste or Scheduled Tribe can by his own act transform himself into a different and higher caste. That depends upon the view one takes of the caste system and whether caste is dependent upon birth or it varies as a consequence of Guna, Karma and Subhavana (*sic*) that is merit or qualities, actions and character. In Hinduism caste had its origin in vocation and was not dependent upon birth. Birth as the sole criterion of caste is a much later develop-

ciety even though one may be sceptical whether at all such an ideal state of Gita classification[16] existed. In such an ideal state of Hindu society mobility[17] from one class to another depending on one's action and mental state existed. It is necessary in this context to recall certain fundamentals inspite of their being common place. The four principal castes of the Hindu society are Brahmana, Kshatriya, Vaishya and Shudra, the hierarchy being signified emphatically by that order and the first three being generally designated as *dvijas* or the twice born.[18] Before we examine the shas-

15 (cont.)
ment and caste became rigid and hereditary when vocations became hereditary". After referring to several texts he says "Hinduism might have become static at one stage but its modern history shows that this is not so now and it would not be wrong to say that caste in Hinduism is not dependent upon birth but actions. The whole theory of Karma is destructive of the claim of caste being dependent upon birth". He concluded that the respondent, a member of a Scheduled Tribe, had become a Kshatriya by his actions. The aforesaid remarks of the learned judge need no elaborate refutation for the subjectivity is apparent and his perception of the present day Hindu society is far from true.

16 Kane rightly points out "When the Puruṣasūkta of the Ṛgveda speaks of Brāhmaṇa, Rājanya, Vaiśya and Śūdra or when Śatapatha Brāhmaṇa expressly says that they are four varṇas, it appears to me that they speak of facts existing in their times and not merely of a theory which was to be striven for as an ideal." Kane, *History of Dharmaśāstra,* Vol. II Part I (1941), p. 47.

17 We have the classic example of Vishwamitra, a Kshatriya, attaining the status of a Brahmana (and that too the status of Brahmarshi, the highest) by his pieties and austerities. The space devoted by Valmiki in Ramayana (-Balakanda cantos 51-65, 392 shlokas) for narrating this episode is significant for, while recognizing the mobility from one Varna to the other, it indicates how difficult the task is. Similarly the fall of the sons of Vasishtha and Vishwamitra from the Brahmana state to the Nishada state is also equally significant.

18 The regeneration of the three higher castes was attained on the performance of the Upanayana or Yajyopavit Sanskar which, in fact, was

tric materials as to the genesis of the lower castes, it is necessary to identify[19] the Shudra community within the shastric framework, for there has arisen some confusion regarding the nomenclature of certain castes which came into existence in later times.

The Shastras[20] have ordained that the only duty of a Shudra is to serve the *dvijas* without envy.[21] It must be emphasized that when Shudras were required to serve the other three communities, there was no debasement involved in their vocation in that pristine state of the Hindu society even though they were discharging menial tasks. This is substantiated by a text of Manu which lays down that a *dvija* can partake the food prepared by the cultivator of land, a family friend, a cowherd, a servant, a barber and he who has dedicated himself even

18 (cont.)
deemed to be the threshold for partaking in other religious activities. It may be noticed that any person belonging to these castes, if he is not initiated, is designated as a 'Vratya' and his progeny will face degradation in the Hindu hierarchy. See Manu II, 39.

19 Identification of the Dvijas is comparatively easy even though some Shudra communities have staked their controversial claims to be classified particularly as Kshatriyas. M.N. Srinivas terms this process of the lower castes striving to attain the status of higher castes as "Sanskritization". See M.N. Srinivas, *Caste in Modern India*, 1970, p. 42. See also the emotional refutation of Golapchandra Sarkar, himself a Kayastha, regarding the view of a High Court that Kayasthas are Shudras. G.C. Sarkar, *Hindu Law* 1933, pp. 151-154.

20 Kane has examined voluminous shastric material beginning with the *Rig Veda*. However, we are relying mainly on Manu because as a leading Smriti, Manu had the widest circulation and was held in high esteem by ancient and medieval scholiasts. In spite of the predisposition of modern scholars against this work, Manu did influence the life of the Hindus for a fairly long period.

21 Manu I, 91. 'Anasuyaya' as translated by Bühler as 'meekly' seems to be inapt.

though such a person is a Shudra.[22] Indeed, the text reflects a state of Hindu society when interdining among the four castes was not strictly prohibited which incidentally establishes that Shudras were not subjected to ill-treatment because of their low ritual status. Further, untouchability was unknown to the Hindu society of those times, a theme to which we will recur later.

With the increasing rigidity of the caste barriers, the social mobility from one caste to another, particularly from the lower ones to the higher ground to a halt. Such a petrifaction was aided by the rule of endogamy.[23] However, with the passage of time Hindu social process witnessed a new phase which is significant from our stand point. Despite shastric enjoinments relating to endogamy, the concupiscence of the members of the upper castes, more particularly the Kshatriyas,[24] could not be contained and the system had to concede, though reluctantly,[25] legitimacy to unions contracted outside the caste. The first major concession was accorded to the morga-

[22] Manu IV, 253. This text has, indeed, intrigued the orthodox Brahmins of modern times.

[23] See, for instance, Manu III, 12. One may argue with equal force that the rule of endogamy is the outcome of the petrifaction of caste barriers. In analyzing a social process, we cannot dogmatically adhere to a particular stand. It is likely that the petrifaction of the caste system and the rule of endogamy mutually strengthened each other. Further we should bear in mind that it is inherent in human nature that a group or a class will always develop, in course of time, its vested interests which it will try to preserve at all costs.

[24] The Kshatriyas who fought wars for the community had obviously more opportunities for contracting polygamous unions and not always with women of their own class. Arjuna and Bhima, the two powerful Pandavas espoused many attractive women of different castes and races even during their exile.

[25] Dilemma is apparent in Manu III, 13 and subsequent verses.

natic unions in the form of *anuloma* marriages wherein men of the higher castes contracted marriages with women of the lower castes. It was only a question of time that the breach made in the system by the recognition of *anuloma* marriages paved way for the cognisance of *pratiloma* unions wherein men of lower castes established liason with women of higher castes. It is interesting to observe that Hindus always abhorred *Varna Sankara*[26] (or commingling of castes) in either of the aforesaid forms for it affected the very foundation of their society. In fact Manu declares that a country which gives rise to *Varna Sankara* perishes with its people.[27]

It is necessary to look closely at the progeny of these intercaste marriages[28] some of whom, in fact, constitute the lower castes which reached the nadir of the Hindu society. It is interesting to observe that the *Smritis* have given distinct names[29] to these groups with defined vocations. The sons born of a Brahmana father from Kshatriya, Vaishya, and Shudra mothers were designated as *Murdhavasikta, Ambashtha* and *Nishada* respectively, the *Nishada* in spite of being an *anulomaja* was assigned a very low ritual status. Whereas the sons of a Kshatriya father from Vaishya and Shudra mothers were named *Mahishya* and *Ugra* respectively, the son of a Vaishya father and a Shudra mother was designated as *Karana*. Among the *pratilomajas*, the son of a Kshatriya father and Brahmana mother

26 See, for instance, Gita I, 41-43.

27 Manu X, 61.

28 It is submitted that the observations of Bhagawati, J., in ***Armugham*** **v.** ***Rajagopal*** A.I.R. 1976 S.C. 939, 944 that: "It is sufficient to state that originally there were four main castes, but gradually castes and subcastes multiplied as the social fabric expanded with *the absorption of different groups of people belonging to various cults and professing different religious faiths*", is a fictitious assumption having no sociological basis. (Emphasis added).

29 Kane has dealt at length the various mixed castes. See *History of Dharmaśāstra,* Vol. II Part I (1941), pp. 69-104.

was known as *Suta*, and the sons of a Vaishya father from Kshatriya and Brahmana mothers were designated as *Magadha* and *Vaideha* respectively. The sons of a Shudra father from Vaishya, Kshatriya and Brahmana mothers were named *Ayogava*, *Kshatta* and *Chandala* respectively, the last one being the most significant from the point of view of our study.The *anulomajas*, *pratilomajas* and some of their offspring in different permutations and combinations may be projected in diagrammatical form. Br., Ks., Vy., and Su., represent Brahmana, Kshatriya, Vaishya and Shudra respectively, F., and M., represent father and mother and the figures in the brackets indicate the *Smriti* references.

(1)

Br.F. — Ks.M. ---------- Murdhavasikta (Yaj. I, 91)
Br.F. — Vy.M. ---------- Ambashtha (Manu X, 8)
Br.F. — Su.M. ---------- Nishada or Parasava (Manu X, 8)

Ks.F. — Vy.M. ---------- Mahishya (Yaj. I, 91)
Ks.F. — Su.M. ---------- Ugra (Manu X, 9)

Vy.F. — Su.M. ---------- Karana (Yaj. I, 92)

(2)

Su.F. — Vy.M. ---------- Ayogava (Manu X, 12)
Su.F. — ks.M. ---------- Kshatta (Manu X, 12)
Su.F. — Br.M. ---------- Chandala (Manu X, 12)

Vy.F. — Ks.M. ---------- Magadha (Manu X, 11)
Vy.F. — Br.M. ---------- Vaideha (Manu X, 11)

Ks.F. — Br.M. ---------- Suta (Manu X, 11)

Combinations

(3)

Ks.F. = Su.M.

|

Ugra M. = Br.F.

(Manu X,15) |

Avruta

(Manu X,15)

(4)

Br.F. = Vy.M.

|

Br.F. = Ambashtha M.

| (Manu X,8)

Abhira

(Manu X,15)

(5)

Su.F. = Vy.M.

|

Br.F. = Ayogava M.

|

Digvana

(Manu X,15)

(6)

Br.F. = Su.M.

|

Nishada F. = Su.M.

(Manu X,8) |

Pukkasa

(Manu X,18)

(7)

Br. F. = Su.M.

|

Nishada M. = Su.F.

|

Kukkuta

(Manu X,18)

(8)

Su.F. = Ks.M. Ks.F. = Su.M.

| |

Kshatta F. = Ugra M.

(Manu X,12) | (Manu X,9)

Svapaka

(Manu X,19)

(9)

Vy.F. = Br.M. Br.F. = Vy.M.

| |

Vaideha F. = Ambashath M.

(Manu X,11) | (Manu X,8)

Vena

(Manu, X,19)

(10)

Vratya Br.F. = Br.M.

|

Bhurja Kantaka

(Also known as Avantya, Vatadhan, Pushpada and Shaikha)

(Manu X,21)

(11)

Vratya Br.F. = Ks.M.

|

Jhalla
(Also known as Malla, Nata, Karana, Khasa or Dravida)
(Manu X, 22)

(12)

Su.Fr. = Vy.Mr.

|

Ayogava Mr. = Dasyu Fr. (Manu X,4
(Manu X,12)

|

Sairandhra
(Manu X,32)

(13)

Vy.Fr. = Br.Mr. Su.Fr. = Vy.Mr.

| |

Vaideha Fr. = Ayogava Mr.
(Manu X,11) (Manu X,12)

|

Maitreyaka
(Manu X,33)

(14)

Br.Fr. = Su.Mr. Su.Fr. = Vy.Mr.

| |

Nishada Fr. = Ayogava Mr.
(Manu X,8) (Manu X,12)

|

Margava or Dasa (Also calle
Kaivarta)
(Manu X,34)

(15)

Br.Fr. = Su.Mr. Vy.Fr. = Br.Mr.

| |

Nishada Fr. = Vaideha Mr.
(Manu X,8) (Manu X,11)

|

Karavara
(Manu X,36)

(16)

Vy.Fr. = Br.Mr. Br.Fr. = Su.Mr.

| |

Vaideha Fr. = Nishada Mr.
(Manu X,11) (Manu X,8)

|

Andhra
(Manu X,36)

(17)

Vy.Fr. = Br.Mr. Br.Fr. = Su.Mr. Vy.Fr. = Br.Mr.

| | |

Nishadha Fr. = Vaideha Mr.
(Manu X,8) (Manu X,11)

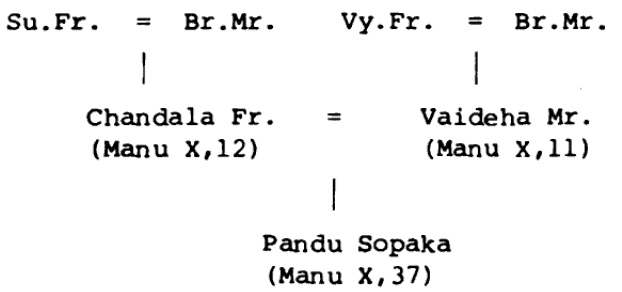
| |

Vaideha Fr. = Karavara Mr.
(Manu X,11) (Manu X,36)

|

Meda
(Manu X,36)

(18)



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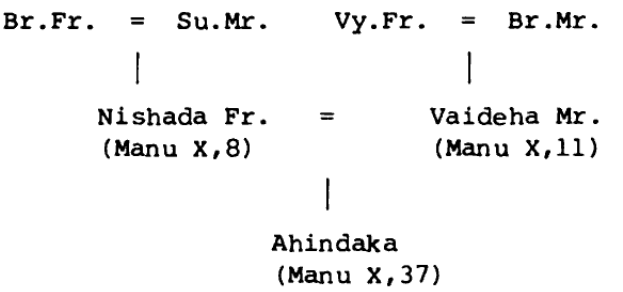

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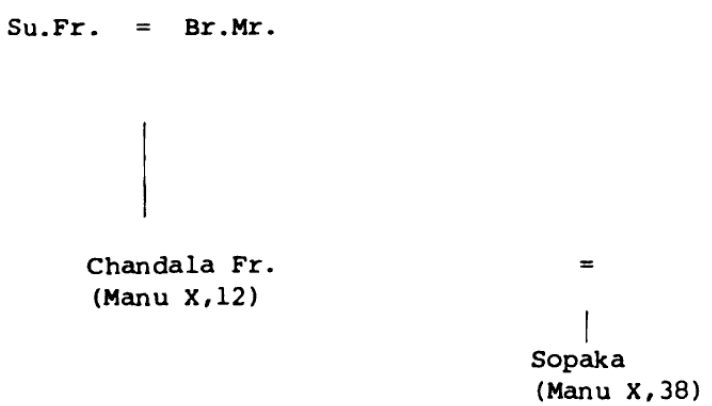

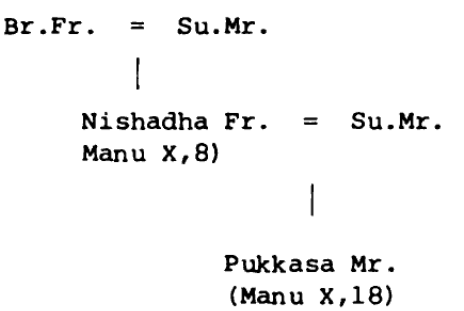

These are some of the castes which came into existence due to the interbreeding among *anulomajas* and *pratilomajas* in different combinations *which is merely illustrative of the process.*[30] Further, some of them are the ancestors of the unfortunate untouchables of modern times. Before examining briefly their vocations which incidentally throw light on the practice of untouchability, it is necessary to consider an important issue as to what status these castes were entitled to in the shastric framework. It is interesting to notice that the *anulomajas* (excepting those born of Shudra mothers), namely *Murdhavasikta, Ambashtha* and *Mahishya* have been declared to be *dvijas*[31] and therefore assigned a status higher than the Shudras. On the other hand, Manu classifies

[30] Manu X, 29.

[31] Manu X, 41.

pratilomajas under the category of Shudras.[32] It is, however, with respect to the classification of other mixed castes, some of whom falling under the category of untouchables that the confusion exists. The orthodox Hindus put these castes under a fifth category and even designate some of the untouchables as 'panchamas'. Acceptance of such a category is contrary to the *Smriti* classification. Manu explicitly lays down: "The Brahmana, the Kshatriya and the Vaishya Castes are the twice born ones, but the fourth the Shudra has one birth only; *there is no fifth one*"[33] and categorically negates the fifth class or caste. We may, therefore, conclude that along with the Shudras in the pristine form, the mixed castes which came into existence later on are also classified as Shudras[34] and of course their social status also varied according to their parentage[35] and usage.

It is useful to recount briefly the vocations of some of these mixed castes. The *Sutas* pursued charioteering (*Ashva Sarathyam*), *Ambashtha*, doctoring (*Chikitsa*), *Vaideha* serving women (of course in palaces) (*strikaryam*), *Magadha*, selling on roads (*vanikpathah*),[36] the *Nishada* engaged in fishing (*matsyaghatah*), *Ayogava* carpentering (*tashtistva*), *Meda*, *Chunchu* and *Madgu* killing wild animals (*aranya pashuhimsanam*).[37] *Kshatta*, *Ugra*, and *Pukkasa* pursued hunting rabits and wild animals (*bilaukovadha bandhanam*), *Digvana* tanning (*charmakaryam*) and *Vena* playing drums (*bhanda vadanam*).[38] It may be observed in this

[32] Manu X, 41.

[33] Manu X, 4.

[34] See Kane, *History of Dharmaśāstra*, Vol. II Part I (1941), p.168. Also Vol. V Part 2 (1962), p. 1642.

[35] Manu X, 29 and 30.

[36] Manu X, 47.

[37] Manu X, 48.

[38] Manu X, 49.

connection that even though the Shastras abhorred *pratilomajas* (whereas it was a mere disapproval in the case of *anulomajas*) some of them pursued vocations which brought them in intimate relationship with the three higher castes[39] and therefore, the question of untouchability does not arise in their case at all. Such a treatment was meted out to them because these *pratilomajas* were born of parents who differed in their castes by one or two degrees. But the worst treatment was reserved to *Chandalas* and *Nishadas* and their offspring in different permutations and combinations because they were the offspring of Brahmana and Shudra parents.

Kane has examined the topic of untouchability[40] with great erudition and has concluded that the canker was not present in the Vedic society[41]. The evidence regarding untouchability during the *Smriti* period, however, is formidable. Regarding the habitation of the people belonging to the lower castes Manu laid down[42] generally that the mixed castes should live and pursue their vocations near Chaityadrumas (perhaps big trees near the villages), cremation grounds, hills and gardens. He was particularly severe towards *Chandalas* and *Svapachas* by laying down that they should live beyond the village with their wealth, namely, dogs and donkeys.[43] Apart from putting them outside the pale of the village, thereby laying the foundation of untouchability, Manu declared that those who observe Dharma should not see them or speak to them[44] and pro-

[39] For instance the *Suta* was very closely associated with the king and so are the Vandi Magadhas who were panegyrists.

[40] Kane, *History of Dharmaśāstra*, Vol. II Part I (1941), pp. 164-179.

[41] Ibid., p.167.

[42] Manu X, 50.

[43] Manu X, 51.

[44] Manu X, 53. The orthodox people have derived 'unseeability' and 'unspeakability' with these people from the reading of this shloka. See Hargovind Sastri, *Manu Smriti*, Chowkhamba (1952), p. 575.

hibited their free movement even during nights.[45] During day they could move about making their presence known by some markings and carry away unclaimed corpses.[46] Therefore, the unseeability, unspeakability and untouchability in relation to these unfortunate classes of people received socio-legal sanction at least two thousand years ago.

Three propositions emerge out of the shastric material: (1) Shudras in the earliest stage of the Hindu society were not illtreated in spite of doing the menial work of the three higher castes and untouchability as we see in the later times did not exist; (2) *Varna Sankara* in different permutations and combinations brought into existence numerous lower castes which also fell under the category of the Shudras with, of course, their own hierarchical status dictated by usage; and (3) the lowest of these castes, particularly the offspring of the Shudra father and Brahmin mother in different combinations, fell under the category of unseeables, unspeakables and untouchables.

III.

It is with the aforesaid background that we should examine the enumeration of the Scheduled Castes under the Constitution. Each one of the castes included in the lists deserves to be investigated sociologically to link up their vocation[47] with the classification recognized under the Shastras. We may just indicate here the *Smriti* roots of some of the castes included in the lists of Scheduled Castes. *Adi Andhra* and *Adi Dravida*[48] find place in Manu as *Andhra* and *Dravida* (in diagramms 16 and 11); *Chandala*[49] finds place practically in all

[45] Manu X, 54.

[46] Manu X, 55.

[47] Pursuance of vocations hereditarily effectuated isolation of these communities.

[48] They find place in the lists of Andhra Pradesh, Tamil Nadu and Mysore.

[49] Andhra Pradesh, Orissa.

ancient works; *Chamar, Chambbhar (Mochi, Muchi* and other equivalents)[50] find corresponding names as *Charmakarah,*[51] *Karavara,*[52] *Dhigvana; Dhobi*[53] (its equivalent *Vannan*[54]) is found as *Rajaka*[55]. Whereas *Garod*[56] appears to have *Varuda* as its equivalent in the *Smritis, Jhali, Malo, Jhalo Malo,*[57] *Mallah*[58] are to be found as *Jhalla* and *Malla,*[59] *Kaibartta*[60] and its equivalents *Keot* or *Keyot*[61] and *Nat*[62] were known as *Kaivarta*[63] and *Nata*[64] under the Shastras. It must be borne in mind that any attempt to correlate these castes with their shastric counterpart would necessarily be sketchy because of the various

[50] Andhra Pradesh, Bihar, Gujarat, Haryana, Maharashtra and other states.

[51] Shabda Kalpadruma Part I (1967), p. 55 refers to "*rajakaścarmakārasca naṭo varuḍa eva ca, kaivartamedabhillāśca saptaite antyajāḥ smṛtāḥ iti yamavacanam.*"

[52] Manu X, 36 diagram 15 above.

[53] Assam, Bihar, Madhya Pradesh, Uttar Pradesh and other states.

[54] Tamil Nadu.

[55] See foot note 51 above.

[56] Foot note 51 above.

[57] Assam, Meghalaya, Mizoram and other states.

[58] West Bengal, Delhi and other states.

[59] Diagram 11 above.

[60] West Bengal, Meghalaya, Mizoram and Arunachal Pradesh.

[61] West Bengal and Tripura.

[62] Bihar, Haryana, Madhya Pradesh, Rajasthan and other states.

[63] See diagram 14.

[64] See diagram 11 and also foot note 51.

permutations and combinations involved in the social process of the mixed castes.

The above discussion brings home the point that the observation[65] of Iyer, J., that Scheduled Castes are no castes in the Hindu sense and the remarks of Bhagawati, J., that the mixed castes came into existence because of the "absorption of different groups of people belonging to various cults and professing different religious faiths"[66] are facile assumptions having no shastric basis. Indeed, the disgrace of evolving such a social pattern which condemned a large section of the community to inhuman suffering has to be shouldered squarely and exclusively by the Hindu society.

The cases involving the Scheduled Castes and the Scheduled Tribes have come up before courts broadly under the following heads: (1) Wherein the elections to legislatures have been challenged on the ground that the party does not belong to the Scheduled Caste or the Scheduled Tribe;[67] (2) Wherein preferential admission has been sought in educational institutions [68] on the ground of belonging to these communities; and (3) where concessions have been extended in service conditions to persons belonging to these communities.[69] Scholarly writing in this area from the Constitutional law perspective is quite substantial and particular reference needs to be made to the writings of Marc Galanter[70] and Parmanand

[65] See foot note 9.

[66] See foot note 28.

[67] *V.V. Giri* v. *Suri Dora* A.I.R. 1959 S.C. 1318; *Horo* v. *Jahan Ara* A.I.R. 1972 S.C. 1840; *Armugham* v. *Rajagopal* A.I.R. 1976 S.C. 939.

[68] *Guntur Medical College* v. *Mohan Rao* A.I.R. 1976 S.C. 1904.

[69] *State of Kerala* v. *N.M. Thomas* A.I.R. 1976 S.C. 490.

[70] Particular reference may be made to these articles:
Marc Galanter, "Caste Disabilities and Indian Federalism", 3 (1961), J.I.L.I. 205-234;"Protective Discrimination for Backward Classes in

Singh.[71] It may be observed in this connection that whereas the resolution of cases falling under type (3) involve essentially Constitutional law issues, the two earlier categories involve primarily Hindu law questions.

It has been urged in several cases that the concerned party is not entitled to contest the reserved seat because he has ceased to belong to the Scheduled Caste by conversion to some other religion;[72] even after conversion to Hinduism he has not attained the status of the Scheduled Caste;[73] he has acquired the status of a higher caste and therefore ceased to be a Scheduled Caste;[74] by merely marrying a person of that tribe she does not acquire the caste status of the husband[75] or, even though a member of that tribe he is disqualified because of having European blood in him.[76] For

7o (cont.)

India", 3 (1961), J.I.L.I. 39-69; "The Problem of Group Membership: Some Reflections on the Judicial View of Indian Society", 4 (1962), J.I.L.I. 331-358; "Temple Entry and the Untouchability (Offences) Act", 6 (1955-1964), J.I.L.I. 185-195.

[71] See Parmanand Singh, " 'Equal Opportunity' and 'Compensatory Discrimination' ", in Constitutional Policy and Judicial Control, 18 (1976), J.I.L.I. 300; "Social Justice for the Harijans: Some Socio-Legal Problems of Identification, Conversion and Judicial Review", 20 (1978), J.I.L.I. 355. It may be pointed out that the later article of Parmanand Singh is an outstanding contribution in this field.

[72] *Rajagopal* v. *Armugham* A.I.R. 1969 S.C. 101.

[73] *Armugham* v. *Rajagopal* A.I.R. 1976 S.C. 939.

[74] *V.V. Giri* v. *Suri Dora* A.I.R. 1959 S.C. 1318.

[75] *Horo* v. *Jahan Ara Jaipal Singh* A.I.R. 1972 S.C. 1840; *Urmila Ginda* v. *Union of India* A.I.R. 1975 Delhi 115 (Wife claiming the caste status of the husband and seeking preferential treatment).

[76] *Wilson Read* v. *C.S. Booth* A.I.R. 1958 Assam 128 (*Horo's* case has wrongly cited this case as of Supreme Court).

instance, in *V.V. Giri's* case,[77] the appellant apart from challenging the validity of the election of the respondent on constitutional issues, also raised the plea that the respondent had by his conduct adopted the life of a higher caste, namely, Kshatriya and therefore ceased to be a member of the Scheduled Tribe. Gajendragadkar, J., while highlighting the difficulties involved in the process of 'Sanskritization' held that there was nothing in the evidence to show that the respondent had been accepted as a member of the Kshatriya community. He, however, laid the foundation of the 'community acceptance' theory by emphasizing that "the caste status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry.[78]

The 'community acceptance' theory as laid down by the Supreme Court in *V.V. Giri's*[79] case has been iterated in later cases. Whereas in *Armugham's* case,[80] the appellant himself had become a Christian at a very young age and later on decided to abandon his new religion in favour of his original Adi Dravida caste (a Scheduled Caste), in *Mohan Rao's*[81] case, the parents of the appellant had become Christians and when the appellant failed to secure admission to Medical College, he lapsed back into his 'Madiga' community. Both the cases raised the same question whether a Christian convert from Scheduled Caste could become a reconvert to Hinduism and resume the membership of the caste to which he originally belonged. The Supreme Court answered the question in the affirmative and laid down:

[77] See foot note 74.

[78] *V.V. Giri* v. *Suri Dora* A.I.R. 1959 S.C. 1318, 1327.

[79] Ibid.

[80] See foot note 73

[81] *Guntur Medical College* v. *Mohan Rao* A.I.R. 1976 S.C. 1904.

> It is for the members of the caste to decide whether or not to admit a person within the caste. Since caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing member. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste... It will therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of that caste to which his parents belonged prior to their conversion to Christianity automatically or as a matter of course, *but he would become such member if the other members of the caste accept him as a member and admit him within the fold.*[82]

Obviously the same criterion will apply even where a non-Scheduled Caste person whether a Hindu or a non-Hindu choses to become a member of the Scheduled Caste.

It may be observed in this regard that the aforesaid problem is not new to courts; indeed, it is a basic problem of the Personal laws.[83] Whereas conversions to proselytizing religions like Islam and Christianity have not posed much difficulty to the courts,[84] conversions to Hinduism have posed some conundrums to the courts. Hinduism has pratically shut its door to outsiders and the absence of specific criteria has deprived the courts of the touchstone for judging the conversions. The way out was the invention of the theory of 'community accep-

[82] Ibid. at 1908. Emphasis added.

[83] *Ratansi Morarji* v. *Administrator General of Madras* A.I.R. 1928 Mad. 1279. *Durgaprasada Rao* v. *Sudarsanaswami* A.I.R. 1940 Mad. 513; *Ramayya* v. *Josephine* A.I.R. 1937 Mad. 172.

[84] The question of conversion to Islam will not pose any problem but the consequential conflict of personal laws raises many difficulties. See, for instance, *Ayesha Bibi* v. *Subodh Chakraverty* I.L.R. (1945) 2 Cal. 405 and *Rakeya Bibi* v. *Anil Kumar Mukherji*, I.L.R. (1948) Cal. 119.

tance' which rendered the question of conversion to Hinduism a question of fact. The reluctance of the courts to interfere with purely caste matters is fully in accordance with the secular approach of the courts and they have always emphasized that unless a civil right is involved they would not step in to adjudicate between an individual and the social group to which he belongs.[85] The courts obviously do not like to get entrapped in the quicksand of caste politics.

The Supreme Court has adopted the technique of Hindu law for solving the problems of the Scheduled Castes and the Scheduled Tribes under the Constitutional law. However, the Court has not spelled out the concept of 'community acceptance' precisely. Does it mean that mere participation of the members of the caste - as in *Horo's* case-[86] in marriage feast is sufficient ? Or is it necessary that a formal *Panchayat* meeting of the elders of the community should admit the person as a member of the caste? In the light of rapid urbanization which has eroded the authority of the caste panchayats, what is the alternative ? It is interesting to note that caste associations have sprung up in big towns and cities which, in fact, are poor substitutes for caste Panchayats.[87] They meet occasionally like companies. Now, is it necessary that the admittance of a person to that caste be proposed, seconded and adopted by that body ? Will it be in the interests of the society to confer such powers on these caste associations ? With the privileges of all kinds conferred by the State on these communities vested interests are bound to arise which may sour the relationship between these communities and the

[85] *Nathu* v. *Keshavji* (1901) 26 Bom. 174.

[86] See footnote 75.

[87] The modern caste associations are unable to exercise the functions of the traditional caste panchayats. The traditional caste panchayats of rural India, apart from maintaining the cohesive character of the caste groups, used to exercise quasi-judicial functions by adjudicating between the members of the group.

upper caste Hindus. These are not mere surmises; with the changing pattern of the Indian society especially with political awareness influencing the caste interests,[88] these matters have to be given serious thought.

It is submitted that the adoption of the 'community acceptance' test of Hindu law for solving the problems of Constitutional law in extending 'protective discrimination' to these communities is not a satisfactory development. Admission of a person into a caste or his expulsion from it as viewed by the courts had no relevance to the community at large unless, of course, a civil right of the individual was involved. So the courts were unconcerned as to the *modus operandi* of the caste bodies in the aforesaid context. Such logic is untenable in the case of the Scheduled Castes for, though they are castes in the Hindu framework, admission of members into this group is not a purely caste matter because it involves heavy burden on the exchequer for extending state patronage. Then, what is the way out of this situation ? It is submitted that subject to two exceptions, namely, that of intermarriage and adoption, the courts could as well take the stand that a non-Scheduled Caste person (whether a Hindu or a non-Hindu) cannot acquire the status of a Scheduled Caste.We may categorically state that preventing a non-Scheduled Caste person from becoming a Scheduled Caste does not in any way affect the freedom of religion enshrined in the Indian law. It may, however, be pointed out that 'Will not such a bar on the entry into the folds of the Scheduled Caste affect adversely the interests of the erstwhile Schedule Caste members who have embraced Christianity or Islam and then abjure their new faith[89] for regaining their former status?' Undoubtedly it will hurt their interests by depriving them of

[88] See, for instance, the unseemly squabbling among several communities in the South which are vying with each other to achieve the status of backwardness.

[89] As in ***Armugham*** **v.** ***Rajagopal*** A.I.R. 1976 S.C. 939 and *Guntur Medical College* **v.** *Mohan Rao* A.I.R. 1976 S.C. 1904.

the protection under the Scheduled Caste status. However, the plausible solution to meet such a situation is to identify the backward classes including the converts to Islam and Christianity and provide protection to them. Such an approach, while protecting the interests of the needy, would discourage sham conversions either way.

The determination of the caste status of a person in the case of intermarriage of a person of the Scheduled Caste with a person belonging to non-Scheduled Caste poses genuine difficulty to the courts. In *Horo's* case,[90] the Supreme Court approved the community acceptance theory and held that the respondent had become a member of the Munda tribe by laying emphasis on the conduct of the members of the tribe at the time of marriage and particularly the social status of the participants. We have already pointed out the pitfalls of this theory. However, the Court could have explored two alternatives in this connection. For instance, it could have been held that (1) by marriage the wife, on the analogy of domicile acquires the caste status of her husband or (2) marriage does not effectuate a change in the caste status of the spouses and they continue to be the adherents of their original castes. The first alternative, though it may attract the ire of feminists, has the advantage of laying down the law in precise terms and the courts will be spared the enquiry into the vague criteria relating to community acceptance. But, of course, it may open up a loop hole for encouraging sham marriages for acquiring the status of the Scheduled Caste.[91] Further, one may point out that it will discourage women belonging to Scheduled Castes from contracting marriages with men of higher castes because while they will be deprived of the legal status of the Scheduled Caste by such marriages, they will not acquire the social status of the higher castes.

[90] Footnote 75.

[91] The feigned marriages contracted by some of the Asians with Europeans for the purpose of acquiring the immigrant status is an analogous example.

The second alternative appears to be more attractive for it paves way for the emergence of 'Uniform Civil Code'[92] by highlighting the irrelevance of caste or religion of the parties. For instance, a marriage under the Special Marriage Act, 1954 will not effectuate change in the religious or caste status of the parties.[93] *Urmila Ginda's* case[94] appears to be correctly decided though the learned judge did not have the aforesaid reasoning in his mind.[95] Though this alternative takes care of the parties to the marriage, it will not answer the question relating to the caste status of the children of such marriages. The courts may, however, take a leaf from the Hindu law enactments[96] and hold that the status of the children depends upon the way they have been brought up. Or there is no harm in holding that their status follows that of their father.

The recent decision of the Delhi High Court in *Khazan Singh* v. *the Union of India*[97] has highlighted the problem from the point of view of adoption. It is a case in which a caste Hindu, namely, a Jat got himself adopted by a Kabir-

[92] As laid down under Art. 44 of the Indian Constitution.

[93] Subject, of course, to the changes effectuated under Sections 19-21A of the Special Marriage Act, 1954

[94] Footnote 75.

[95] Rangarajan, J., in fact, emphasizes: "It seems to me that to permit a lady like the petitioner belonging to a higher caste to compete for a seat reserved for such socially and educationally backward class of people, merely by reason of her marrying a person belonging to such a caste might even defeat the provision made by the State in favour of such socially and educationally backward classes by reserving certain posts for them."*Urmila Ginda* v. *Union of India* A.I.R. 1975 Delhi 115, 116.

[96] See Section 2 (1) explanation (b) of the Hindu Marriage Act, 1955.

[97] A.I.R. 1980 Delhi 60.

panthi Julaha (a weaver caste included in the list of Scheduled Castes) keeping in view the advantages that accrue to him as a member of that caste which the learned judge calls aptly an instance of 'career planning'.[98] He thereafter secured a Scheduled Caste certificate and took up a job in the Delhi Police Services. We are not interested in the termination of his services by his employers and his filing a writ in that connection. However, when the Commissioner initiated proceedings against him for the cancellation of the Scheduled Caste certificate issued to him formerly and cancelled it ultimately, the petitioner challenged it by filing a writ. The respondents took the stand that the petitioner was not a member of the Scheduled Caste by birth and therefore, not qualified to the status of that caste. The petitioner contested the stand of the respondent on the ground that once the validity of the adoption is upheld, he cannot be denied the status of a Scheduled Caste merely because he belonged to a higher caste formerly. It is interesting to note that the respondents could have assailed the validity of the adoption itself on the ground that the petitioner was over twentyone years at the time of adoption.[99] However, they ignored that ground[100] and relied upon the untenable stand that in order to take advantage of the status of the Scheduled Caste, a person must be so by birth. The judgement of Ranganathan, J., is an example in lucidity and projects the problem in the right perspective. The learned judge, while appreciating the efforts of the legislature in eradicating the caste distinctions, points out the apparent contradiction inherent in the situation:

[98] Id. at 66.

[99] See Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956 which prescribes the maximum age of fifteen years for the adoptee unless there is a custom which permits the adoption beyond that age.

[100] Because the respondents did not contest the validity of the adoption, the learned judge drew a presumption in favour of the validity of the adoption.

> And now the head of Medusa rears itself up once again curiously on the shoulders of a legislation intended to ameliorate inequalities in society due to another obnoxious pattern of discrimination based on caste.[101]

Repelling the contention of the respondents that adoption has been resorted to by the petitioner having an eye on the job prospects that are incidental to the Scheduled Caste status, the learned judge observed:

> It appears to me that the answer to the question depends on the legal effect of adoption and that the fact that the transaction of adoption took place on the eve of the petitioner seeking a government employment and perhaps with a view to obtain "S.C." status is immaterial. In *Mohan Rao's* case the motive for reconversion was ignored. For the purposes of the present arguments, we have to proceed on the basis that the adoption is a valid and genuine one and if so, the question of motive for conversion is of no consequence. The worst that can be said is that, borrowing a leaf from the "tax planners note book in regard to the permissible if not exactly laudable, practice of taking advantage of a loop hole in the law, the petitioner has done a bit of "career planning". Since it is lawful ... it is not permissible to refuse to give the legal effect because the course was adopted by the petitioner in order to obtain a post in government service.[102]

In view of the fact that Section 12 of the Hindu Adoption and Maintenance Act lays down that an adopted child shall be deemed to be the child of the adoptive father or mother for 'all purposes', Ranganathan, J., held that the expression 'all purposes' is comprehensive enough to include social, religious and cultural bonds in the new family. His Lordship laid down that:

[101] A.I.R. 1980 Delhi 60 at 63.

[102] Id. at 65-66.

> It is very difficult to see why the tie of caste which indeed was and perhaps still is a very strong tie that binds a Hindu should be said to be outside the purview of the provision.[103]

When the respondent sought the application of community acceptance test to cases of adoption also, the learned judge rightly rejected the suggestion:

> Here the adoptee becomes a member of the caste by reason of his status as an adopted son and not as an outsider seeking admittance depending upon the sweet will and pleasure of the other members of the community. That rule can only apply where admission is sought and has to be granted in accordance with the customary rules, where the aspirant has no statutory sanction or birth right in his favour. Just as it is not open to the caste to refuse to recognize a new born in the family of one of its members as belonging to the caste, it is not open to the caste to sit in judgement over the statutory status enjoyed by the adoptee.[104]

One cannot but agree with the aforesaid logic of the learned judge. Dilating upon the implications of the decision, Ranganathan,J., observed:

> I was also hesitant to hold that a person in the position of the petitioner who neither needs nor deserves any special treatment would be entitled to the special concessions available to a S.C. by way of reservations in public employment. On second thoughts however, it appears to me that the issue should be decided by looking not merely at the impact of adoption on him but also on its effect on the future generations ... The process of adoption is a two way process... If a member of the Scheduled Caste were to be adopted into a family of higher caste why should he still be treated as a person of the S.C. when the congeni-

[103] Id. at 66.

[104] Id. at 67.

> tal handicaps have been removed by the intermingling of the caste and the removal of the wide disparities between the forward classes and the backward classes of society is an object of top priority in India to-day. The Governments in many States offer special inducements and rewards for cases of such intercaste marriages and encouragement should be given to attempts at mutual integration whether by marriage or adoption ... I therefore think that the formula "Once a Scheduled Caste always a Scheduled Caste" contended for by the learned counsel for the respondent should not receive acceptance.... if genuine adoptions both ways become frequent, they may eventually lead to the development of that social equality which the Constitution aims.[105]

We are in full agreement with the sentiments expressed by Ranganathan,J., and hope that the provisions of the Hindu Adoption and Maintenance Act will be utilized to evolve an egalitarian social order. However, if the higher castes attempt to subvert the legal provisions by encouraging sham adoptions, statutory changes to prevent such abuse may have to be effectuated.

[105] Ibid.

Part IV

SOCIETY, RELIGION, AND LAW

THE CĀNDRASENĪYA KĀYASTHA PRABHUS AND THE BRAHMANS: RITUAL, LAW AND POLITICS IN PUNE: 1789-90

Narendra K. WAGLE

Introduction

The right and privilege of the Cāndrasenīya Kāyastha Prabhu caste (*ñātī*) of Maharashtra to have access to Vedokta (the vedic recitations) during the performance of the sacraments (*saṃskāra*) and other sacrificial rites was a contentious and highly-charged emotional issue in 18th century Maharashtra. By restricting the Vedokta, the brahman factions which initiated the disputes wanted to relegate the Prabhus to the rank of *śūdras* and impose on them all the social disabilities of that rank.[1] The Prabhus in turn would successfully secure annulment of the decrees as they obvi-

[1] See Keśav Trimbak Gupte, *Rājyādyācī Gāgābhaṭṭī*, Pune, 1919, pp.1-42; 111-177. Gupte's entire book is a scholarly attempt to refute Rājvāde's contention that the Prabhus in Maharashtra had the status of *śūdras*. Ronald Inden says (*Marriage and Rank in Bengal Culture*, Berkeley, California, 1976, pp.26-33) that Veda and Vedic worship 'produced an ordered community of ranked jatis' in Bengal in the Middle period (1450-1800). The brahmans of Bengal, however, had given the Vedokta privileges to the Kayasthas there, although the latter were designated as *sat śūdras*. The difficulty in placing the Kayasthas of Hydarabad in the *varṇa* scheme has been referred to by Karen Leonard (*Social History of an Indian Caste: The Kayasths of Hydarabad*, Berkeley, California, 1978, pp.11-15). Cf. N.K.Wagle, "A Dispute between the Pancal Devajna Sonar and the Brahmans of Pune regarding Social Rank and Ritual Privilege: a Case Study of the British Administration of Jati Laws in Maharashtra", in *Images of Maharashtra: a Regional Profile of India*, London, 1980, pp.129-159. As the author points out, the brahmans of Pune were unwilling to give Vedokta rights to the Sonars.

ously considered them as humiliating and unwarranted intrusions on their presumed social standing as *kṣatriyas*. That their aspiration to be recognized as *kṣatriyas* entitled to the Vedokta was periodically challenged by the brahmans, is made clear from nine recorded cases of disputes between the two groups; the first dispute was settled in 1459 and the ninth one in the year 1827.[2] The dispute concerning the violation of the brahmanical code of behaviour (including the Vedokta) is known as *grāmaṇya* in Marathi documents. The *grāmaṇyas* raise some important questions regarding the authority of the śāstra and the custom of the learned (*śiṣṭācāra*). As Lingat observes, "The rule of custom is in principle indifferent to the religious consequences of an act. It could be in accord with the principles of śāstras; it could equally be in conflict with them".[3] The Prabhu-brahman *grāmaṇya* of 1789-90, the subject of this paper, indicates that the śāstras could be overruled and the custom of the learned be imposed because of the persistance of a group motivated by revenge. Political factionalism, lobbying and individual efforts could also be instrumental in altering the course of justice. The Prabhus lost out in the 1789-90 round, not because the śāstras and the opinion of the learned were against them, but because the brahmans of Peṇ, with the support of an influential brahman faction in Pune, could successfully coerce that caste into submission. This they did by organising street agitations, demonstrations and fastings in their opponents' houses. This brahman exercise in power predates the Gandhian type of '*satyāgraha*' by at least a century and a half. The case also gives us an insight into the politics of survival of the minority Prabhu caste surrounded as it was by a sizable brahman population in the city of Pune which was ruled by a Citpāvan brahman Peśvā and his brahman administrators.

[2] V.K.Rājvāḍe (Ed.), *Marāṭhyāṃcā Itihāsācī Sādhane* (*M.I.S.*), vol.VI, p.523. Also see V.T.Gupte, *Cāndrasenīya Kāyastha Prabhu Grāmaṇya Prakaraṇātīl Pāc Assal Ajñāpatre*, Pune, 1914, pp.7-9 (introduction).

[3] Robert Lingat, *The Classical Law of India*, Berkeley, California, 1973, p.176. J.D.M.Derrett has indicated the difficulties in establishing the relationship between positive law with its scriptural origin and custom in his *Religion, Law and the State in India*, London, 1968, pp.148-70.

The details of the *grāmaṇya* of 1789-9o reveal the interplay of religious, legal, political and personal factors as they are presented in the letters written by Lakṣmaṇrāv Govind and Malhār Rāmrāv to their Prabhu caste leader Rāmrāv Citṇīs of Sātārā. It is noteworthy that the narrative of the dispute, described in this paper by way of synoptic translations of letters written intermittently from August 1, 1789 to February 12,179o, gives the Prabhus' perspective; that is, the point of view of the 'victims'. The letters are evidently factual reporting of the events as they transpired during the course of six months. Accurate information was important to enable the receiver to weigh the situation and possibly give advice. Unfortunately we do not have a contemporaneous brahman version of the dispute. I have also given the details of the government decree of 179o which deprived the Prabhus of the Vedokta.

The letters from Lakṣmaṇrāv Govind and Malhār Rāmrāv of Pune to Rāmrāv Citṇīs

August 1, 1789 [4]

Haripant Phaḍke and Āpā Baḷavant began to champion the cause of the brahmans. The brahmans of Peṇ started the *grāmaṇya* by refusing to offer cooked rice in the fire at the performance of the *garbhādhāna* sacrament for a Prabhu householder. As the Subhedār of Peṇ sided with the brahmans, the Prabhus initiated the dispute. The brahmans prepared a document of agreement proclaiming that brahman priests should not offer boiled rice (*carū*) in sacrifices for Prabhus, should not keep the fire started at the sacred thread ritual going for four days, should not let the Prabhu women practise Sati and that oblations for the dead should not consist of boiled rice. The brahmans agreed to offer their services only to those Prabhus who abided by these rulings. For about a year the Prabhus could not perform their ritual duties. Indispensable acts such as marriages were done in other districts. The Prabhus then we went to Puṇe and complained.

[4] Bālkṛṣṇa Ātmārām Gupte (ed.), *Cāndrasenīya Kāyastha Prabhuṃcā Itihāsācī Sādhane* (*C.K.P.I.S.*), year 1, numbers 5-6, December 1881 - January 1882, pp. 6-10.

Gaṇpatrāv Māmledar was told that his brother, Bāburāv Kolhaṭkar, the Subhedār of Peṇ, was obstinately upholding the brahman demands. He urged him to do otherwise but Bāburāv replied that the brahmans were in no mood to listen and that he would take action only if he were convinced of the Prabhus' rights by means of the sacred books. He was convinced by Ābā Gurubābā and the Senior Gurubābā. He brought ten senior brahmans from Peṇ and Gurubābā showed them the sacred books. Gurubābā said there were major shortcomings in Gāgābhaṭṭa's manual for ritual. It was decided to annul the letter of agreement prepared by the Peṇ Brahmans. Kolhaṭkar and the Peṇ Brahmans endorsed the new settlement. After six months some brahmans began objecting and would not abide by Kolhaṭkar's ruling. Two brahman employees of Gurubābā were sent to conduct ritual activities as government deputies.

Four to six months later there was a Purāṇa story-telling session at Kolhaṭkar's house. Many brahmans attended and told him that they would not accept his giving *prasād*, holy powder and sweetmilk to the two brahmans. They claimed those brahmans were performing the rites for the Prabhus irresponsibly. The brahmans wrote a letter of agreement identical to the one they had rejected before. They said that new procedures should be followed as the ones used before were not correct. Kolhaṭkar said that they should write a new manual with explanations backed by scriptural authority. The brahmans promised to do so but could not establish reasons for rejecting the current ritual practices. Nor could they agree on future action. Instead they decided to ostracize the houses of those brahmans who would not consent to their new letter of agreement. Thus they ostracized about seventeen households including that of Kolhaṭkar. A brahman mob began agitating. Kolhaṭkar reported these developments to the Peshvā in Puṇe. Nānā Phaḍnis ordered the Sarsubhā, the head provincial officer, to fine and bring to Puṇe the brahmans who were inciting the riot. He sent guards to bring about thirty of these brahmans. But about one hundred brahmans came to Puṇe and spread exaggerated stories about being oppressed and dishonoured. The Sarsubhā asked why they had come in such numbers, why they had torn up the initial agreement and then produced another and why they were denying the Prabhus their services as they had been performing rituals for them before. He asked for a new

agreement in writing. All but ten or twenty of the brahmans returned to Peṇ. They could not produce a new agreement but they wrote that they had been wrong in providing service to the Prabhus and were willing to do expiation (*prāyaścitta*) for their past deeds.

Āpā Baḷvant assured the brahmans that he would resolve their problems. He asked Nānā why learned brahmans were being disgraced for the sake of Prabhus. Nānā replied that the Sarsubhā would settle the matter. Āpā Baḷvant and Ayyāśāstrī urged Rāmaśāstrī Prabhuṇe, the chief law officer of the Peshvā to intercede on behalf of the Peṇ Brahmans. He spoke to Nānā who replied that he did not wish to interfere. Then Āpā Baḷvant, Ayyāśāstrī and the brahmans decided not to engage in a legal dispute with the Prabhus but that a letter of agreement signed by teṇ thousand brahmans should be prepared. This would win over Nānā. The brahmans approved a list of agreement and added to it the nine articles in the list prepared at the time of Nārāyaṇrāv Sāheb. They met at Ayyāśāstrī's house and discussed Yamājī Śivdev's procedure allowing the Prabhus only five *saṃskāras*. Gurubābā was there and said that according to the ancient sriptures the Prabhus were pure *kṣatriyas* and should continue to perform the religious duties of that caste. He criticized Gāgābhaṭṭa for destroying their reputation and for writing that some Prabhu rituals should be performed with Vedic mantras and others without them. For if the caste did not have the right to perform some rituals with Vedic mantras, they should not be allowed to perform others with them. He pointed out that Yamājī had initiated a *grāmaṇya* on account of political malice and it had failed. He suggested that if Yamājī's prescriptions were rigorously applied the brahmans themselves would not be blameless. The entire assembly was confounded by Gurubābā's arguments. No one attempted to refute him. Trimangalācārya Śāstrī was impressed by Gurubābā's quotations from the scriptures. He told Ayyāśāstrī that his undertaking was improper since the Prabhus were pure *kṣatriyas*.[5] The Śaṅkarācārya of Śringeri Math came to Puṇe and saw the brahman list of agreement. He said he could

[5] Ibid., Trimaṅgalācārya went to Ayyāśāstri and said, "Your undertaking is improper (*ayukta*). We are convinced that they [Prabhus] are pure [*kṣatriyas*] (*āmhās he śuddhase ṭhāūk āhe*)".

not assent to a deed which went counter to the Prabhus' *dharma*.[6] The Pen Brahmans accompanied by a foot soldier of Apa Balvant began visiting the houses of the Pandits (learned scholars). They refused to endorse the agreement since the list contained only five *saṃskāras* for the Prabhus while they and their ancestors had been performing the thread ceremony (*vṛtabandha*) for them. Thus it would be very inconsistent of them to approve it. As it became clear that few were endorsing the agreement, some brahmans who initially were willing to do so changed their minds. Gaṅgādhar Dikṣit bluntly refused to do Āpā Balvant's bidding.[7]

The Prabhus wrote to Rāmaśāstrī that the brahmans were bullying them and seeking to destroy their caste. They asked for his advice since he had supported them for a long time. He replied that he was not involved in the affair and that the affair itself was highly irregular (*aśuddha goṣṭa*). He adviced them to complain to the government and to Nānā.[8] Meanwhile the list of agreement was not being circulated. Ayyāśāstrī told Nānā that respectable senior brahmans were not endorsing the list (*śiṣṭa koṇi sammate ghālīt nāhīt*) which the brahmans wished to circulate. He advocated that the government press the issue. Nānā refused to interfere. He noted that previously Yamājī Pant and others had tried to stop the Prabhus' Vedokta but had failed. He asked why the brahmans had continued to perform the sacred thread ceremony for the Prabhus even though Yamājī Pant's manual recommended only five *saṃskāras* for them. Nānā also wondered if there was any evidence to disprove the supporting references from the scriptures given by the Prabhus'

[6] Ibid., The Śaṅkarācārya of Śriṅgerī *maṭh* came to Pune. The brahman list of agreement was shown to him. He replied, "We are the founders of the *dharma* (*āmhī dharmasaṃsthāpaka*). We can not give our assent to a deed which seeks for its eradication (*ucceda karṇe te sammat ghālāvayace nāhī*)".

[7] Ibid., Gaṅgādhar Dikṣit said, "We are not the servants of Āpā (*Āpāce cākar nāhī*). Who does he think he is (*Āpā koṇ*). Tell him we will not do his biddings (*āmhī karat nāhī sāṅg jā*)".

[8] Ibid., Rāmaśāstrī said, "Your entire caste should approach the government and Nānā (*sarkārkaḍe va Nānākaḍe sarva nātīnī ubhe rāhūn bolāve*)".

family priest. Ayyāśāstrī said that, while the scriptures shown as evidence were authentic, the caste was accused of having deviated from the rules in the past though it was not doing so at the present time. Nānā said that he had given up his youthful habit of eating onions (*palāṇḍu bhakṣaṇa*). If he were told to start eating them again, he would be being asked to fall from grace. Nānā asked why the Prabhus should be asked to revert to bad practices which they had abandoned. He said that he did not wish to interfere, that the brahmans should go to the Sarsubhā and that he would confirm his judgement.

August 11, 1789 [9]

Ayyāśāstrī, Dādāśāstrī Limaye and Āpā Baḷvant assumed leadership of the Peṇ Brahmans and carried on the *grāmaṇya*. Early in the month of Śrāvaṇī a Peṇkar Brahman got a pledge from Gurubābā not to go to the houses of the Prabhus to perform Śrāvaṇī rites. On Sarsubhā's orders Janobā directed the brahmans to perform these rites. The brahmans refused and distracted Gurubābā by taking him to the temple of Omkāreśwar. Nānā asked Janobā why he could not execute his work. Dādopant Limaye was summoned to the Peshwā and told that it was his responsibility and that he must bring the Prabhus' family priest and instruct the brahmans to conduct the rituals the next day. Dādopant reported this to Rāmaśāstrī who ordered that four brahmans come for questioning (*jābsāl*). They came eventually but with reluctance. Gurubābā was also brought. Rāmaśāstrī asked the brahmans on the basis of what authority the *śrāvaṇī* ritual should not be performed for the Prabhus. Rāmaśāstrī chastised them for trying again where both Yamājī Pant and Nārāyaṇrāv had failed.[1o] The brahmans said that they would abide by

[9] B.A.Gupte, *C.K.P.I.S.*, 1, 6, January 1882, pp.10-11.

[1o] Ibid., Rāmaśāstrī asked the brahmans, "On whose authority (*koṇtyā ādhārāvar*) are you asserting that the *śrāvanī* ritual should not be performed ? Has any one here consulted the *śāstra* (*koṇī śāstra pāhile āhe kī kāy*)? They replied that they had not. Rāmaśāstrī said, "You assert that they do not have the rights (*yās adhikār nāhī*). Have you amongst you a spokesman who can elucidate matters more than the śāstra?" They said no. Rāmaśāstrī added, "Your actions

any decision reached in court in accordance with the śāstra (*śāstra-sammate*) but that there would be a violent disturbance if the *śrāvaṇī* was administered for the Prabhus in the meantime. On being questioned by Rāmaśāstrī, Gurubābā affirmed that rituals were being performed properly in the Prabhus' homes with rice balls as oblations. This took place on the fourteenth day of the full moon cycle.

In advance it was expected that the Peṇ Brahmans would start a riot on the fifteenth full moon day of Śrāvaṇī. When Nānā was informed he summoned Janobā and Dadopant Limaye and scolded them for not ensuring that the ritual of Śrāvaṇī was performed. We were convinced that the Śrāvaṇī rite would not take place. The sun set before we could approach Rāmaśāstrī. The latter told Dādopant to inform the Prabhus that, although the *śrāvaṇī* had not been performed on time, they should not worry but should take their meals as the rite would be performed in the constellation of Hasta, the first lunar asterism.[11] With Nānā's permission Dādopant came to us. We said that the government should settle the dispute, that only the brahmans' obstinacy had prevented the performance of the rite and that we did not know what to do as our caste had no support and all the rituals were being left undone. Dādopant brought back a message from Nānā and Rāmaśāstrī that he would arrange to have all the rituals performed the next day. He asked us to begin our meals and we did.

August 22, 1789[12]

Aided by the Peṇkar and other brahmans Āpā Baḷvant became chief organiser (*sarvādhyakṣa*) in agitating for bringing into effect the resolution against the Prabhus initiated in the time

1o (cont.)
are futile (*tumhī karitā he pariṇāmāce nhave*). Formerly Yamājīpant tried to stop the Prabhus rituals without success. Nārāyaṇrāv also tried in vain. What is your contention now (*tumhī kāy padārtha*)".

11 In Maharashtra *śrāvaṇī* includes the ceremony of renewal of thread. Generally food is not eaten unless the ceremony is performed.

12 B.A.Gupte, *C.K.P.I.S.*, 1, 6, January 1882, pp.11-12.

of Nārāyaṇrāv. About a hundred brahmans fasted (*upoṣaṇa*) until dawn at the house of Tātyā Citnīs.They demanded that the brahman cooks and waterbearers leave the service of the Prabhus. Nānā and RāmaśāstrĪ asked the Prabhus to comply with the brahmans' biddings. The brahmans were told to give in writing the names of the Brahmans working in the Prabhus' houses and of those who had been subsequently driven out by the brahmans. The brahmans said they would do so on being ordered by the government. RāmaśāstrĪ's messenger and peon came and dispersed the brahmans through asking why they were still being obstinate after the Prabhus had agreed to follow their wishes by dismissing their brahman cooks and waterbearers.

The brahmans had another plot to start a riot in Tātyā Citnīs' palace, to remove the Prabhus' sacred thread and to change their *dhotra* (lower garment) so that it would be worn with a double fold instead of a single fold. Since we were on the alert, they retreated. Nānā advised Āpā Balvant to follow his policy of non-interference. But the latter obstinately seeks revenge against the Prabhus, even using a brahman mob.

God is our only support. You should complete all the rituals (*tirtha vidhī*) as soon as you receive this letter [advice to Rāmarāv Citnīs in Satara from Govind and Malhār in Puṇe]. We have decided to give food to ten to twenty cows instead of the dinner for brahmans obligatory for us at the time of *śrāddha*. A Purāṇa story-telling session is arranged at the house of Nilkaṇṭharāv Citnīs. The brahmans object to the brahman Hardās (story-teller) being there. For he remains standing while we are all seated.

Haripant Tātyā privately told Gaṅgādhar Dikṣit that he had been appointed as master of the assembly (*ādhvarya*) to deliberate on this dispute. Dikṣit said that he could not settle the issue in favour of the brahmans as long as Gurubābā was providing two to four scriptural references in favour of the Prabhus and no one was refuting him.

August 31, 1789[13]

The activities of the Pandit group in support of the Prabhus fully satisfied us. After the arrival of Tātyā Citnīs the brahmans'

[13] B.A.Gupte, *C.K.P.I.S.*, 1, 6, January 1882, p.12.

riots ceased and so did the dinners for brahmans and the sacramental and ancestral rites performed by the brahmans for the Prabhus. Nānā and Tātyā told Āpā Baḷvant to abandon his obstinacy since the Prabhus' resolve would become firmer, his authority would diminish and since settlement should be done through Rāmaśāstrī. Āpā Baḷvant became frightened. At his request fifty state troopers guarded his palace. He took great precautions while going about in the city. Nānā declared that he wished to be impartial and let Rāmaśāstrī settle the dispute. Tātyā was ready to interfere only if an obvious fault was found in either side. Āpā Baḷvant took an oath that by an ingenious device he would goad the Prabhus into committing omissions.[14] Trimbakrāv conducted many meetings with Tātyā Ciṭnīs which were clearly hostile in their intent. Thus the negotiations reached a final impasse.

September 3, 1789[15]

Ayyāśāstrī secretly told Nānā that the Prabhu caste was entitled to ritual privileges according to the śāstras.[16] Nānā said that whatever was proper should be followed. We have been gathering scriptures which support our claims. The brahmans are not agitating now. Tātyā still refuses to intervene. We are keeping quiet as we can do nothing about the non-performance of the *śrāddha* and *śrāvaṇī* rituals.

Tātyā Phaḍke and Āpā complained to Nānā that brahmans were to be found fasting at their doors. Nānā said, "In the past many tried in vain to interfere with the Prabhus' privileges. The document extracted from them by Nārāyaṇrāv was annulled. What will you gain by securing a letter in which they admit that they were not entitled to the rights which they claimed? Destiny has blessed them with good fortune. You are relatively newcomers. They are not being obstinate even though they have had to give up the performance of all their ritual duties. If you round them up, how many will you kill? What about the public outcry over this? According to the śāstras

[14] Ibid., *yuktīne rājī karun uṇe karito asī pratijñā kelī.*

[15] B.A.Gupte, *C.K.P.I.S.*, 6-7, January and February 1882, pp.12-13.

[16] Ibid., *śāstrārtha pahātā yāṃce ñātīce ṭhik āhe.*

they are not deviating from the rules but are entitled to more rites than they have been practising.[17] While the brahmans are in charge of all ritual, there are none in their caste. It seems strange that you have so much concern for the brahmans and are acting as if you were their preceptors. This agitation is worthless. The brahmans only congregate at your doorsteps since you lend them a willing ear. Why do you not come straight to the point? What evidence have the brahmans got to support their claim? The Prabhus' preceptor silenced the pandit assembly with substantial arguments supported by a few books. Why were none of the brahmans capable of opening their mouths then? They should act in a restrained manner." Tātyā Phaḍke reported this to Gaṅgādhar Dikṣit and said that he was disturbed but that he could take no further action since Nānā was not taking the matter to heart. Gaṅgādhar Dikṣit said, "Things do not appear in your favour on the basis of the Pandit assembly and the śāstras. It would be to your advantage to maintain the Prabhus' current practices. If I were to arbitrate this issue, I would give a verdict in conformity with the śāstras.[18] The Prabhus will accept a settlement effected by their preceptor but it is difficult to convince him. The rules in the manuals of Gāgābhaṭṭa and Yamājī Pant were not followed in practice. As these manuals are of relatively recent origin, non-observance of them cannot be construed as deviant behaviour. There is no argument against the proof from the scriptures given by the Prabhus' preceptor.[19] If one thinks that they have disregarded established canons of conduct, then we are all in the same situation. We ourselves are lax in our behaviour. If the Prabhus are wrong, so are the brahmans in administering the rituals for them. The rites administered to the Prabhus cannot be construed as deviant behaviour (*anācāra*)."

[17] Ibid., *śāstrādhāra pāhtā te vāvage cālat nāhit cāltāt tyāhun tyānī adhik karāve*.

[18] Ibid., *āṃhās vicārile tarī śāstrādhāre sāṅgṇe paḍel*.

[19] Ibid., The proof adduced by the preceptor is preponderant. There is no argument against it. Who can, therefore, dare say that the *śāstra* is false (*to upādhyā prādhānya madhun bolto tyāce uttar hot nāhī teṃvhā śāstra laṭke kase koṇi mhaṇāve*).

September 27, 1789[20]

We wrote about the Peṇkar Brahmans fasting at the palace of Rāmaśāstrī. Nānā and Tātyā said they would inform them of the government decision within four days. Rāmaśāstrī invited to his house Trimbakśāstrī, Timagakcārya, Dādāśāstrī and two to four other śāstrīs. He asked why they were freely conducting meetings and moving about recklessly while he had to remain without food until evening with brahmans fasting at his house. He stressed that they must satisfy the Prabhus' desire to know about the status of their caste. He questioned Dādāśāstrī who admitted that the Prabhus were Cāndrasenīya of Dālbhya *gotra* and were entitled to sacramental rites. But he said that they deviated from the norm (*anācāra*) in their practice of the sacraments. Ramāśāstrī asked how he could claim that the Prabhus' behaviour was deviant when the brahmans were performing for the Prabhus those rites which the Prabhus have been enjoined not to perform; namely, rites according to the Veda (*vedokta*), worship of the Śāligrāma stone and sacrifice (*hom-havan*) with mantras. When Dādāśāstrī replied that there had been some deviant behaviour in the Konkan and Māval area Rāmaśāstrī pointed out that in any event it was likely that not all the fifty thousand brahmans in Puṇe strictly observed the codes (*ācāra suddha*). He wondered if they should lose their brahman status for breaking their own ritual code, since in practice they were only doing expiations of their own volition. This confounded Dādāśāstrī but he refused to give a statement in writing to Nānā that the Prabhus were Cāndrasenīya.

Tātyā is taking the initiative to champion the brahman cause but is ineffective because of the presence of Nānā and Rāmaśāstrī. We will inform you of future developments. You should bring from Śaṅkarāv a copy of a book which could be presented as evidence.

October 21, 1789[21]

We have been writing to you about the *grāmaṇya* frequently. Recently one or two articles were removed from the list (*yādī*)

[20] V.T.Gune, *The Judicial System of the Marathas*, Poona, 1953, appendix, p.338

[21] Gune, *Judicial System*, p.339.

which was composed in Nārāyaṇrāv's time and it was sent to Rāmaśāstrī. After adding five to seven more comments he returned the list with a statement that the list did not express his own opinion, which, he insisted, must accord with the śāstras. Nānā declined to have anything to do with it. The next day Nānā suffered from piles. Then he told Tātyā that they were being injust in not basing their decision on the rules of the śāstras (*śāstrarītya*) and that it might be because of this fault (*doṣa*) of theirs that he was suffering from piles. They consulted Āpā, Dādopant, Marāṭhe, Gaṅgādhar Dikṣit, Goḍbole and Mahālā Dikṣit. This group said that they should issue equivocal permission allowing whatever was practiced before to be followed, since the Prabhus were Cāndrasenīya and so had the right of the three *karmas* and were entitled to all but one of the five articles in the list. The difficulty was that it was necessary to prohibit something on one hand and then give permission for the same thing on the other.[22] Rāmaśāstrī is not well. Therefore the case is temporarily on hold. Today we are celebrating the *garbhādāna* festivities. The investigation conducted by Gaṅgādhar Dikṣit is now rather vague and not much discussed.

December 12, 1789[23]

After the death of Rāmaśāstrī, Ayyāśāstrī urged Nānā that he should succed Rāmaśāstrī in the position of Head Śāstrī (*śāstrīyāchā adhikār*). Ayyāśāstrī wished to be in charge of settling the affair of *grāmaṇya*. Nānā discouraged him and informed his mediator that the Prabhus were acting properly,[24] that Ayyāśāstrī was suspected of being prejudiced against them and that injustice to the Prabhus could not be tolerated.[25]

[22] Ibid., *jyā toṇḍe nakā mhaṇto tyā toṇḍe karā kase mhaṇāve*.

[23] Gune, *Judicial System*, p.340.

[24] Ibid., Their argument is based on the *śāstra* (*te śāstrātī boltāt*).

[25] Ibid., Those who are doing evil should be told to follow the right path. They are acting according to the śāstras and we cannot tell them to deviate from it (*vāiṭ karit asel tyās cāṅgle kar margānī karā mhaṇon sāṅgāve te cāṅgle yethāśāstra kartāt tyās vāiṭ karā mhaṇe āmce vastu hoṇār nāhī*).

While Rāmaśāstrī lived, he served the people without greed and had a great reputation. He was a gem of a man. There is no one in the government who could replace this great brahman. His son was given the cloth of investiture for Rāmaśāstrī's position. Gaṅgādhar Dikṣit and Trimbakrāv were appointed to assist him. The former, who still commutes to Vāī, was given seniority. As the Head Śāstrī is required to be constantly in Puṇe, it is thought that Ayyāśāstrī may be installed to replace Rāmaśāstrī.

January 15, 179o[26]

Haripant Tātyā is disturbed at our resolution. We all decided that a Pandit assembly should be convened. Swearing by the Gaṅgā, they should examine the sacred books. If the ancient books are faulty, they should be destroyed. If a new manual is composed by the brahmans for the Prabhus, then it should be taken to Banaras. If it is judged as appropriate there, then we will be governed by its rules. We are not prepared to accept any other alternative.

January 18, 179o[27]

The Peṇkar Brahmans have been active in the dispute. In the morning two brahmans were sent to see if Gurubābā was at his house. Trimbakrāv Tātyā Citṇīs was informed and had Ābā escorted to the Citṇīs' palace. Fifty to seventy Peṇkar Brahmans blocked the entrance of the lane leading to the palace. They demanded that Ābā be handed over to them but this was refused. Then a brahman mob gathered. We managed to collect two to four hundred of our caste fellows. No one was allowed to enter or leave the lane. Nāro Mahādev had gone to Bājīrāv Bhāu. As soon as the brahmans saw him enter the lane, they tore apart his sacred thread and disrobed him (*dhotre soḍli*). He was kept there in that condition.

On Monday the eleventh, the brahmans again assembled near the palace. Our men entered the palace in groups of ten to seventy-five. The brahmans forced their way to the palace. They snatched away the robes and sticks of the Maratha guards and began beating them.

[26] B.A.Gupte, *C.K.P.I.S.*, 1, 7, February 1882, p.13.

[27] B.A.Gupte, *C.K.P.I.S.*, 1, 7, February 1882, pp.13-15.

Ayyāśāstrī's son-in-law accompanied by twenty brahmans forced his way to the door. The door was locked to prevent the mob from entering. In the ensuing commotion Ayyāśāstrī's son-in-law and one brahman managed to enter. We became worried about the situation and thought that if two hundred of our men stationed inside the palace and an equal number of brahmans from outside were to push the door it would crack open. About twenty brahmans inadvertently might get killed in this melee. This would endanger our lives.[28] Four or five hundred of our caste fellows who were inside the palace climbed up and began throwing tiles at the brahmans. The brahmans retreated and said that they would not come near the entrance but would stay quietly in the lane. We agreed to stop throwing tiles.

As this Monday was a fasting day, we did not touch water or food. We sent two or three messages to Nānā and Tātyā informing them of the events. Later Jivbā and Rāvjī Āpājī went as emissaries to Tātyā's house. Dādopant and Ayyāśāstrī were there and demanded that they hand over Gurubābā. Tātyā added that this should be taken as a government order. In reply they said that Ābā was not there, that they had been without food and water for two days, that the brahmans should be removed from the lane and that the government should decide soon about the *grāmaṇya*. Ayyāśāstrī and the Peṇkar were asked to end the brahmans' siege. But the brahmans refused to leave the palace. On the third day Jivbā and Rāvbā again went to Tātyā. The latter said that they were full of duplicity (*labāḍ*) and asked why they were not handing over Ābā.Jivbā and Rāvbā replied, "We shall not tolerate this insolence. We are ready to abide by the decision of the tribunal. Otherwise issue a government order telling us what to do. But you are bent on oppressing us. We do not want to leave the Peshvā's kingdom. We are prepared to die. Kill us if you can."

In the afternoon Dādopant came to the Citṇīs' palace. He said he would ask the brahmans to leave if Ābā were handed over. We replied that we did not have him. We wrote to Nānā that we were dy-

[28] Ibid., About ten or twenty brahmans might get killed. If this should happen, the changes of our survival will remain slim, indeed (*dahāvis brāhmaṇa martāt brāhmaṇa melyāvar āmhīhī rāhato he ghaḍat nāhī*).

ing of thirst and that if we went to the river for water some brahmans would die in the ensuing commotion. Nānā sent Dādopant to Tātyā. Tātyā sent Ayyāśāstrī, Bābā phaḍke and Dādopant to negotiate. Ayyāśāstrī said that we should give compensation for the burning of a brahman's headgear during the riot and that we should let that hostage go. We gave him a new headgear (*pāgoṭe*) and freed him. We agreed to exchange salutations with the brahmans. We asked about our man who was held as a hostage and was without his loin cloth and his sacred thread. He was given new ones and released.

January 25, 1790[29]

On the fourteenth of January Gurubābā went to Gaṅgādhar Dikṣit and asked to be taken to Tātyā. On the next day Dikṣit took Ābā to Tātyā. When Tātyā asked him why he ran away, Ābā said that he remained in hiding when the Peṇkar began rioting as he feared that they would disgrace him. He asked that the guards be removed from his patron's house (*yajmān*). Tātyā said that he would speak to Nānā and remove the guards. Then Tātyā complained that, according to the Peṇkar, Ābā had administered rites at his patron's houses in spite of instructions that they should not be performed from Śrāvaṇa onwards. Ābā denied this and insisted that he had been following the government instructions and would continue to do so. Tātyā told Gaṅgādhar Śāstrī to stand as suretee for Ābā's behaviour. On the next day the guards were removed from the Citṇīs' palace.

Dādopant told Jivbā that the Prabhus should abide by the ruling of Nārāyaṇrāv which had been accepted by Govindrāvbābā and Rāmajībābā. He specified that the Prabhus should avoid Vedic mantras and perform the sacraments without them. Jivbā replied that this talk was useless as the Prabhus had to accept what was sanctioned by Tātyā Citṇīs who was in charge.

The Peṇkar Brahmans were told that a settlement would be made by the fifteenth. That date has passed and they are again stirring up trouble.

[29] B.A.Gupte, *C.K.P.I.S.*, 1, 7, February 1882, pp.15-16.

February 12, 1790[30]

We received the letter sent through Nānā Mairāḷ and Sajjā and the letters sent from Vaḍgāv. In the previous letter we wrote about the *grāmaṇya*. Tātyā took Jivbā to Nānā and said that the Prabhus should follow the example of Govindrāv and RāmajĪbābā who had given a letter of approval to the settlement made earlier in the time of Nārāyaṇrāv. Later Jivbā sent a reply to Tātyā that all the Prabhus wished for a public meeting to establish the origin of their caste and that then they would adopt the course of action ordained by the government. Jivbā was again told to give a letter endorsing Nārāyaṇrāv's decree.

The government realizes that we have no intention of giving that letter. There is a plan to initiate another commotion by sending in the brahmans. If we lose our determination, they will begin to harass us. With the blessings of our ancestors we must accept whatever results. In God alone we trust. There is no one here in Puṇe with whom we can plead or who can give us refuge. The young and old throw stones at us. The agonies we experience are beyond measure. With regard to the ritual duties the caste is harassed in numerous ways. We have been accused of sedition and treachery. Those who malign us control the government and are instigated by the brahmans. There is no refuge for our caste. Disregarding the śāstras and the counsel, they ridicule us.[31] We should not fear death. God has preferred to remain blind. The day God opens his eyes will be the day of liberation. But we shall not give a letter endorsing the list which was forced on us in the time of Nārāyaṇrāv.

March 10, 1790[32]

Letter to VāĪ Brahmans, priests, astrologers and the head of religious affairs from Mādhavarāv Nārāyaṇ Peshvā.

[30] B.A.Gupte, *C.K.P.I.S.*, 1, 7, February 1882, pp.16-17.

[31] Ibid., *śāstra va vicār napāhātā upahās cālalā*.

[32] *BhāratĪya Itihās Saṃśodhan Maṇḍal*, Annual Report, 1912, SvakĪya Grantha, number 4, pp.97-98.

The brahmans of Peḍne of Sālsī Paragaṇe came to the government and complained that, while the government reached a settlement concerning the conduct of the Prabhus during the time of Nārāyaṇrāv, the Prabhus disregarded this settlemant and acted in a manner contrary to the rules of *dharma* assigned to them. The settlement was made in the time of Nārāyaṇrāv and the Prabhus agreed to the following nine articles:

(1) The Prabhus will not utter Vedic mantras at any ritual.
(2) They are not to utter the Vedic mantras even if they know them.
(3) Rice balls are not to be used as oblations during the months of the performance of *śrāddha*.
(4) Worship of the Goddess and worship for the ancestors is to be done with Purāṇic mantras. The Prabhus are not to feed the brahmans.
(5) The Prabhus are to frequent the same gods as the *śūdras*.
(6) Brahmans are to be addressed loudly with the salutation, *daṇḍavat*.
(7) The Prabhus are not to worship the Śāḷigrāma.
(8) The Prabhus are not to employ Vaidic Brahmans or the brahmans' wives. They are not to employ brahman scholars as waterbearers.
(9) Prabhus who wish to marry widows will not be prevented from doing so.

Although the Prabhus agreed in writing to these nine articles, they performed the brahmanic rituals on the sly. As a result a dispute arose between the Peṇkar Brahmans and the Prabhus. The brahmans stopped performing rituals at the Prabhus' houses. Recently the government in consultation with the learned (*śiṣṭa saṃmate*), came to the conclusion that the nine articles previously settled on were correct (*yogya*). The Prabhus in Puṇe have been warned to adhere to them. The Prabhus living in your territories should be explicitly warned to observe the above nine articles.

Observations and Concluding Remarks

The Peṇ Brahmans and the Prabhus

The brahmans of Peṇ were the originators of the *grāmaṇya*. The central issue revolved around the use of the Vedokta and the rituals and the brahmanic code of behaviour associated with it. The Peṇ Brahmans were not getting the support expected from the majority of the brahmans śāstrīs and the pandits of Pune. Much to their chagrin, the śāstras, too, were inclined to favour the Prabhus' claims for the Vedokta. They filed a complaint with the Pune government as a result of which ritual privileges of the Prabhus, the main target of the brahmans, were formally suspended by the government, pending the decision of the brahman tribunal. By fasting in front of the Prabhus' houses, they were able to secure the dismissal of the brahman cooks and waterbearers employed by the Prabhus in their homes. They would not allow a brahman story-teller to give a performance at a Prabhu house on the ostensible grounds that, while the Prabhus remained seated, the story-teller stood to recite the Purāṇas. On the day of the major riot, they removed the sacred thread and the *dhotra* (lower garment) worn in a single fold from their Prabhu victim. Their agitations and fastings provoked the Prabhus into taking aggressive, but essentially defensive actions, to save their honour and their homes. The Peṇ Brahmans were tacitly supported by a brahman faction led by Āpā Baḷvant and Tātyā Phaḍke who had their own scores to settle with the Prabhus. In the end nine articles in the government decree of 179o favoured the Peṇ Brahmans.

The Prabhus' trump card was the śāstras. As Gaṅgādhar Dikṣit remarked, "The proof [in favour of the Prabhus' Vedokta] adduced by their preceptor is preponderant. There is no argument against it. Who can, therefore, dare say that the śāstra is false?"[33] Their preceptor Gurubābā (Ābāśāstrī Ṭakle), indeed, quoting from the scriptures convincingly argued the Prabhus' claims to the Vedokta before the pandit assembly by proving their *kṣatriya* genealogy.

The Prabhus evidently strove hard to cultivate the influential śāstrīs and the brahman administrators. They must have had an ex-

[33] See note number 19 of this paper.

cellent intelligence network which gave them access to the transactions taking place within the inner circles of the śāstrīs and the brahman administrators of the Peśvā *darbār*. In Rāmaśāstrī they found a good ally who could support their interests. With his death their expectations took a downward turn, especially with the appointment of Ayyāśāstrī, their antagonist, as the Head law officer of the government. The brahman riots created a serious situation with respect to law and order. Because of this Tātyā Phaḍke found it expeditious to reinstate a 1773 decree disallowing the Prabhus' rights to the Vedokta.

The *śāstra* and the opinion of the learned

The śāstras were invoked to deal with the Prabhus' Vedokta and its corollary, their ranking as *kṣatriyas*. The continuing debate on the Prabhus' Vedokta must have prompted Nānā Phaḍnis to write to the Banaras Brahmans (Nov. 29, 1778) seeking clarification on that point In their reply to Nānā (October 17, 1779)[34] a decade prior to the 1789-9o *grāmaṇya*, the brahmans were explicit in their assertions that, according to *Reṇukā Mahātmya* of the *Skandha Purāṇa*, the Prabhu were Cāndrasenīya *kṣatriyas* with a Dālbhyagotra. As *kṣatriyas* they were entitled to perform rituals according to the Vedokta (*vaidika karmācā vidhī siddhaca āhe*). The brahmans cited additional works which they consulted as evidence; namely, Gāgābhaṭṭa's *Kāyastha-dharmapradipa*, Govindbhaṭṭa's *Govindbhaṭṭi*, Kamalākarbhaṭṭa's *Śudrakamalākara* and *Jātiviveka*. Nānā in his letter had referred to an alleged misconduct (most probably the practice of widow remarriage) on the part of the Prabhus. The brahmans answered, "In Kaliyuga the cases of misconduct (*anācāra*) are prevalent in all castes. In Karnataka among the Deśastha Brahmans a daughter is married to her mother's brother and children are born out of this union. This goes against the śāstra (*śāstra viruddha*), against established convention (*loka viruddha*) and is misconduct (*anācāra*). Similarly the girls of Miśra Brahmans of Mithila are kept unmarried until they are twenty-five after which time they are married and bear children. These two brahman castes have not lost their six *karmas* and their castes because of these actions. How can you then say that the

[34] B.A.Gupte, *C.K.P.I.S.*, 1, 3 and 4, October-November, 1881, pp.14-19.

Prabhus have lost their caste by their misconduct (*anācāra*)". It is significant to note that Nānā Phaḍnis was fully aware of the support of the śāstras for the Prabhus when the *grāmaṇya* erupted in 1789.

In the 1789-179o *grāmaṇya*, there appeared to be a consensus among the Pune brahman protagonists and the Prabhu antagonists that the Prabhus were endowed with the Vedokta rights according to the śāstras. The Prabhus' preceptor, Gurubābā, argued their case: "The Prabhus" he said, "were pure *kṣatriyas* (*suddha kṣatriyas*). They have been following the religious duties enjoined on them in the ancient scriptures. In the mean time, Gāgābhaṭṭa has damaged the reputation of their *jāti*. This *jāti* has, indeed, to take issue with Gāgābhaṭṭa. How did he compose the book? Why did he posit dubious mantras (*phakikā mantra*) for this *jāti*? Why did he write that the Prabhus could perform some *saṃskāras* with vedic mantras and other without them (*koṇte saṃskārī vaidika mantra koṇte saṃskār amantrak ase kā lihile*)? If they did not have the right to perform some *saṃskāras* with Vedic mantras, they should not have any right to perform some with them. Hence his book is false (*grantha khoṭā*). But one generally adheres to the customs prevalent at a given time and place... But the brahmans are now saying that even Gāgābhaṭṭa's manual should not be followed."[35] Gaṅgādhar Dikṣit, the arbitrator appointed by the government to settle the dispute, also said that, if the Prabhus were wrong, so were the brahmans in administering the rituals for them. He stressed that the rites administered for the Prabhus were according to the śāstras and could not be construed as misconduct (*anācāra*). Rāmaśāstrī was convinced that the śāstras were in the Prabhus' favour and argued with the brahmans saying, "You enjoin them not to perform rites according to the Veda (*vedokta karu nakā*), to worship the Śāḷīgrām stone or sacrifice with mantras. But you do perform the same for the Prabhus. How can you then say that their behaviour constitutes a breach of the norm".[36]

[35] The long dialogue is in August 1, 1789 letter. See B.A.Gupte, *C.K.P.I.S.*, 1, 5-6, December 1881 - January 1882, pp. 6-10.

[36] Gune, *Judicial System*, appendix, p.338 *tumhī yās mhaṇtā vedokta karu nakā śāligrām pūjā karu nakā hom-havan karu nakā teṃvhā karitā mag anācāra to kasā*.

The Prabhus, however, ended up losing their Vedokta privileges at the end of the *grāmaṇya* in 1790. As soon as Bājīrāv Raghunāth became the Peśvā in 1796, the *grāmaṇya* was reopened. Letters were sent to Banaras asking for the opinion of the pandits and śāstrīs there. Bāḷśāstrī Ṭokekar, the newly appointed Head Śāstrī of the government, convened a tribunal consisting of the brahmans.[37] The Prabhus' Vedokta rights were thus reinstated according to the opinion of the learned.[38]

Politics and the *grāmaṇya*

The Prabhus rose to prominence under the Maratha king Shivaji (1627-1680). They were employed by him and his descendants as secretaries, political correspondants, writers and accountants. Bāḷājī Āvajī Ciṭṇīs was in charge of Shivaji's coronation and was responsible for bringing Gāgābhaṭṭa, the well-known *dharmaśāstrī*, from Banaras to perform Shivaji's coronation rites according to the Vedokta. It was at Āvajī's behest that Gāgābhaṭṭa had composed the *Kāyasthadharmapradīpa* to facilitate the acts of the sacraments for the Prabhus.[39] In 1747, Yamājī Śivdev organised a *grāmaṇya* against the Prabhus in which he asserted that the Prabhus were *śūdras* and entitled only to the five *saṃskāras*, minus the *upanayana*. The Prabhus also did not have the Vedokta rites according to Yamājī. The king Shahu annulled that *grāmaṇya* with the full connivance of

[37] The brahman tribunal included Bāḷaśāstrī Ṭokekar, Narasimhaśāstrī Gurjar, Paraśarāmśāstrī, Rāmcandra Dikṣit Bām, Triṁbakśāstrī, Suryanarāyaṇśāstrī, Bāḷśāstrī Candāvarkar and Trimalācārya. See Rājvāde, *M.I.S.* vol. VI, pp.548.

[38] Ibid., pp.546-548. Letters were sent to brahmans and Māmledārs (district officers) of various religous centres of Maharashtra informing them of the decision of Bājīrāv II to reinstate the Prabhus' rights. See G.C.Vad, *selections from the Sātārā Rājās and the Peshwas' Diaries, Bājīrāv II*, vol. V, Poona, 1908, pp.251-152.

[39] G.S.Sardesai, *New History of the Marathas*, v.I, Bombay, 1946, pp.217-18. See also V.T.Gupte, *C.K.P.Ājñāpatre*, pp.3-6.

[40] *Bhāratīya Itihās Saṃśodhaka Mandal*, Annual Report, 1912, pp.93-97.

Bāḷājī Bājīrāv, the brahman Peśva.[41] As the Prabhus' Gurubābā stated in the pandit assembly that the *grāmaṇya* initiated by Yamājī was due to political malice (*rājyakāraṇī dveṣa*). It did not, therefore, come to fruition. That there was as active enmity between Govindrāv Citṇīs, a leading member of the Prabhu caste, and Yamājī, is clear from a document in which it is stated that Yamājī actually sent as assassin to murder Govindrāv.[42]

The Prabhus' eminence as soldier-statesmen and high-ranking administrative officers from Bāḷājī Bājirāv's time onwards to the end of the Peśvāī (175o to 1818) was both an asset and a liability. As statesmen, they were engulfed in the court intrigues and factions, and, as a result, were prone to persecution by opposing factions. On the other hand, their influence in the court meant that they could wield enough political clout to effect settlements in favour of their caste. The major confrontation between the Prabhus and the brahmans took place during Nārāyaṇrāv Peśvā's short-lived tenure (December 13, 1772 to August 3o, 1773). He was the one who sanctioned the nine-article decree against the Prabhus' Vedokta. The Prabhu leaders such as Sakhārām Harī, Rāmrāv Jivājī Citṇīs and sixteen other Prabhus were forced to ratify this decree.[43] But that decree was annulled within eight month by Raghunāthrāv Bājīrāv, Nārāyaṇrāv Peśvā's uncle, who was responsible for the latter's assassination. Raghunāthrāv's trusted partisan was a Prabhu, Sakhārām Harī, one of the signatories of the decree. Sardesai has indicted the Prabhus in the plot to murder Nārāyaṇrāv since he had alienated them by passing an adverse decree.[44] There is no hard evidence to prove the Prabhus' involvement in the murder plot. It seems probable, however, that because the Prabhus were siding with

[41] B.A.Gupte, *C.K.P.I.S.* 1-2, September, 1881, p.12.
See also K.T.Telang "Gleanings from Maratha Chronicles", in *Rise of the Maratha Power*, M.G.Ranade, Bombay, 1961, pp.14O-142.

[42] C.A.Kincaid and D.B.Parasnis, *A History of the Maratha People*, Bombay, 1931, p.291.

[43] G.S.Sardesai, *Marāthī Riyāsat, Uttara Vibhāg*, 2, Pune, 1929, p.496.

[44] G.S.Sardesai, *New History of the Marathas*, V. III, p.21.

Raghunāthrāv, the 1773 *grāmaṇya* was decided against them by Nārāyaṇrāv and his followers in the Peśvā's court. Their persecution of the Prabhus thus took the form of religious discrimination. From 1774 to 1795, the *de facto* power fell into the hands of Nānā Phaḍnis (1742-1800), the regent of the Peśvā Mādharāv II (1774-1795). Harī Ballāḷ Phaḍke alias Tātyā (1729-94), a veteran brahman military commander of the Peśvā, was a trusted friend and associate of Nānā. Āpā Baḷvant Mehendaḷe (1748-1798) was yet another brahman military commander who was an assistant to Tātyā. Thus the peculiarity of the Maratha central power in relation to the Prabhu-brahman *grāmaṇya* was that all the three powerful administrators were brahmans. So was the Peśvā.

Āpā Baḷvant was blatantly against the Prabhus and actively canvassed on behalf of the Peṇ Brahmans. It was only with great difficulty that Nānā could control him. Āpā had, in fact, pledged to "goad the Prabhus into making a blunder", so that he could then have his revenge. His intentions might have been too well articulated. His personal life was in jeopardy and he moved about cautiously in fear of the probability of a Prabhu assault on himself. Tātyā was, on the other hand, a senior statesman. There was no doubt that he, too, was a sworn enemy of the Prabhus. But he would not take actions against them unless he could find faults in their external *modus operandi*. The Peṇ brahman riots generated a sufficiently serious 'law and order' situation for him to clamp down on the Prabhus for the maintenance of the public peace. Tātyā was also aware of the Prabhus' Vedokta rights through his friend Gaṅgādhar Dikṣit.

Nānā Phaḍnis emerges as a most astute and sensible brahman administrator who would not take sides in the *grāmaṇya*. He was fully aware of the Prabhus' Vedokta rights, but did not seem eager to endorse them officially lest he offend his close associates like Tātyā and Āpā and the brahman community of Pune. He wanted the Sarsubhā to handle the case and eventually ended up in appointing a brahman tribunal headed by Gaṅgādhar Dikṣit, who, incidentally, had no special respect for Āpā. The Prabhus were in constant touch with Nānā with their complaints. He seems to have been

responsive to their requests. We find him constantly reminding Janobā or Dādāśāstrī to be on the alert while doing their job. More importantly, Nānā seems to have been politically sensitive to the aftermath that would result from any overt steps taken to annoy the Prabhus. In a dialogue warning Tātyā and Āpā against taking hasty steps against the Prabhus, he stated, "In the past many tried in vain to interfere with the Prabhus' privileges. The document extracted from them by Nārāyaṇrāv was annulled under favourable circumstances. If the circumstances become favourable to the Prabhus, they will not forget this rankling insult. It is probable that you will gain your objectives, but having attained them you may be required ultimately to give in to the Prabhus' demands."

Rāmaśāstrī, the chief law officer of the Peśvā, along with Nānā, was a restraining influence on both Tātyā and Āpā. The Prabhus considered him an ally and sought his advice. He lived up to their expectations by supporting their Vedokta cause. In his death the Prabhus lost a good advocate. Ayyāśāstrī, his successor, did not have many qualms about denouncing the Prabhus' cause.

Since all the key decision makers in the government and their advisors were brahmans, they appeared to be conscious of their 'moral' obligation to sustain the norms of the śāstras. They were apparently in a quandry. They knew that the śāstras favoured the Prabhus' Vedokta and they seemed reluctant to initiate actions which would openly contravene the śāstras. On hearing about the Prabhus' śāstric support, Tātyā was silenced and refrained from action. Nānā's surmise that he suffered from the piles because of the supposed injustice he was perpetrating on the Prabhus by remaining indifferent to their plight, although they had the support of the śāstras, is yet another case in point. Eventually, the coercive 'moral' methods of the Peṇ Brahmans - their fastings and 'sit-ins' - gave rise to communal tensions within the city of Pune. By endorsing the decree passed in 1773, the brahman administrators in 179o could claim that they restored order out of chaos.

The Peṇ Brahmans' victory was short-lived. Haripant Phaḍke (Tātyā) died in 1794. Mādhavrāv Peśvā II followed him in 1795. Bā-

jīrāv Raghnāth, the son of Raghunāthrāv, assumed the Peśvāship in 1796, and the structure of power at the Peśvā *darbār* changed. It is significant that the two Prabhu sardārs Nilkaṇṭhrāv Pāge and Rāvjī Āpāpjī were key members of the faction which helped Bājīrāv to acquire the Peśvāship.[45] Nānā Phaḍnis lost his stewardship of the Pune government. Āpā Baḷvant (Āpā), a marked enemy of the new brahman Peśvā, committed suicide. A new tribunal was set up to investigate the Prabhus' Vedokta rights and erinstated them. The 1773 decree of Nārāyaṇrāv, endorsed in 179o, became a dead letter in 1796. The Prabhus' preceptor, Gurubābā (Ābāśāstrī Ṭakle), who had fled the city of Pune in 179o to settle in Nagpur came back to that city after six years.[46]

In summing up, the paper indicates that the śāstras and the opinion of the śāstrīs are not immutable. At the same time they are not merely a scholastic exercise. They can be ignored if political expediency demands it. Laws and regulations are susceptible to change if enough public support is generated. Finally, the śāstras are helpless in an adverse political climate; they can be sustained under favourable odds.

[45] Rajvade, *M.I.S.*, V.VI, pp.546-548.

[46] V.T.Gupte, *C.K.P.Ājñāpatre*, p.8 (appendix).

GOD, DHARMA AND SOCIETY IN THE YĀDAVA KINGDOM OF DEVAGIRĪ ACCORDING TO THE *LĪḶĀCARITRA* OF CAKRADHAR

Günther-Dietz Sontheimer

1. The Religious Conditions in the Yādava Kingdom of Devagirī and the *Līḷācaritra*

The Yādavas ruled from Devagirī (Daulatābād) in Marāṭhvāḍā. The heartland of the kingdom was the Godāvarī river basin in northern Maharashtra from where the kings tried to extend their rule to much over the present-day Maharashtra and other parts of the Deccan. The Godāvarī river basin can be considered to be a typical nuclear agricultural area forming the backbone of a kingdom, as, e.g., the ancient Tamil *marutam* (riverine area) was seen as the backbone of the kingdom and characterized by the rule of Vēntaṉ (Indra).[1] The Yādava kings claimed to base their kingdom firmly on the brahmanical notion of society, that is, on the *varṇāśrama* or *caturvarṇya* system. This was clearly expressed by Puroṣottama, one of the ministers of Rāmacandra Yādava (1271 - 1311 A.D.), shortly before the incursions of the Muslims. He claimed to be a student of Veda and *smṛti* and to have given separate courses of conduct to the

[1] See *Tolkāppiyam* III.5. Vēntaṉ has been identified with Indra (Intiraṉ). The term nuclear agricultural area or region of settled village agriculture has been borrowed from Burton Stein's essay "Integration of the Agrarian System of South India," in: Frykenberg, R.E. (ed.), *Land Control and Social Structure in Indian History*, Madison, Wisc., 1969. Cp. also Sontheimer, G.D., *Birobā, Mhaskobā und Khandobā*, Wiesbaden, 1976, pp. 19, 23 ff.

various *varṇas* and *āśramas*, in other words to have administered *varṇāśrama dharma*, *dharma* in its entirety.[2] Similarly Kṛṣṇadeva, or Kānherdev (1245 - 1261), as he is more popularly called in the *Līḷācaritra* is referred to as "intent on the restoration of the Vedas".[3]

The Yādava kingdom saw the rise of the Marathi language which was spoken by the Yādava kings, the extension of agriculture and the spread of temples, correctly or wrongly attributed to the famous Hemādrī, the *karnaṇādhīśvara* or *mahākaraṇādhipa* (chancellor) of King Mahādeva (1261 - 127o).[4] He was also associated with the successor of Mahādeva, King Rāmacandra (1271 - 1311). Hemādrī's famous *Caturvargacintāmaṇi* reflects the attempts to collect and consolidate the religious rites and observances existing at that time from a *śāstric-purāṇic* point of view and sets a guideline to the religious life for a society to be administered according to *Dharmaśāstra* and the *varṇāśrama* system. That the Yādava King Rāmacandradeva wanted to have control over religious matters is also indicated in the "Inscription of the 84" in the Viṭhṭhala temple of Pandharpur in the south, on the border of the kingdom.

In this inscription which records donations to the extension of the temple Rāmacandradeva is called "the chief of all (religious) groups of devotees of Pāṃḍarī (Pandharpur) and the guidline of all (religious) customs".[5] The different sections of the *Caturvargacintāmaṇi* deal with *vrata*, *dāna*, *tīrtha*, *mokṣa*, and *pariśeṣa*.[6] Though the work deals with *caturvarga*,

[2] Derrett, J. Duncan M., "Law and Social Order before the Muhammadan Conquest," in: Id., *Religion, Law and the State in India*, London, 1968, pp. 171 ff., p. 175 f.

[3] Verma, Onkar Prasad, *The Yādavas and Their Times*, Nagpur, 197O, p. 174.

[4] Kosambi, D.D., *Myth and Reality*, Bombay, 1962, p. 52. Kane, P.V., *History of Dharmaśāstra*, vo. I, pt. II, Poona, 1975, p. 749.

[5] S.G. Tulpule, *Prācīna Marāṭhī Koriva Lekha*, Puneṃ, 1963, p. 179.

[6] Kane, op. cit., *ibidem*.

i.e. the four *puruṣārthas, dharma, artha, kāma,* and *mokṣa,* the vast population consisted of "Śūdras", a population to which the access to Sanskrit, Veda, and *mokṣa* was practically closed and which, though influential, had thus no access to scriptural religion. Moreover, the *bhakti* movements of the Āḻvārs and Nāyaṉārs in Tamilnadu and of the Vīraśaivas in Karnataka had proven to be a much more readily available access to God.

The god of *bhakti* promised more readily salvation in the form of nearness, merger, or even identity with God than the tiring and laborious migration through cycles of *saṃsāra* leading to *mokṣa* or *svarga*. Especially the two famous protagonists of *bhakti*, Jñāneśvar and Cakradhar were aware of the religious aspirations of "women and Śūdras", which prompted Jñāneśvar to compose his commentary on the *Bhagavadgītā* in Marathi.[7] But, whereas Jñāneśvar had hardly any intention to form a threat to the existing religious and social order, Cakradhar was less careful in his dealings with the rules of society, about the demands of ritual purity, and in his considerate and "liberal" attitudes towards women. Jñāneśvar's support of the social order is e.g. evident in his comment on the *Bhagavadgītā*, when he says (3.169):

> *mārgadhāreṃ vartāveṃ / viśva heṃ mohareṃ lāvāveṃ /*
> *alaukika nohāveṃ / lokāṃprati /.*
>
> One should keep on the traditional way of duty,
> And lead the world to progress,
> One should not do something
> Which is different from popular convention.

Nevertheless Jñāneśvar's life and the effect of his work must have been a spiritual relief when social and ritual conditions threatened to become rigid, but his work did not seriously result in *varṇasaṃkara* ("confusion of castes") however apprehensive the stalwarts of the *varṇāśrama* system might have

[7] See *Śrī Jñāneśvarī*, Mumbaī, 1960 (Govt. edn.), 18. 1447-1449: the Veda is rich, but appeals to the upper *varṇa* and is miserly, because women and Śūdras were ignored. Therefore the Veda appeared in the guise of the *Gītā* to remove this deficiency.

been. In this way Jñāneśvar prepared the typical Maharashtrian way of the saint who may live within society as a *gṛhastha* and combines *nivṛtti* and *pravṛtti*. This attitude did not topple the convential order of society, but rather made it workable and tolerable. Jñāneśvar, the "outcast Brāhman", even had to get a *śuddhipatra* from the Brahmans of Paiṭhaṇ (Pratiṣṭhāna).[8]

Paiṭhaṇ remained the seat of the *śāstric dharma* and brahmanical learning and even in later times Muslims would direct appeals to the Brahmans of that town because of their reputation of resolving cases.[9]

Cakradhar was after all not only a saint, but an *avatār* of Parameśvar according to the beliefs of the Mahānubhāv sect. He says of himself: "a walking and speaking god is hard to get in the world."[10] He was elusive, wandering from place to place, first in solitude for twelve years and than attracting followers. He and his followers tended to be "heterodox", deemphasizing the importance of the Veda which must have been an anathema to an orthodox believer in the Veda, like Hemādrī. The followers of Cakradhar eventually became a sect with canonical ritual and ethical works, with clear features of a "counterstructure", but with elements drawn from the structure which was actually to be rejected.[11] Yet, it would be wrong to say that Cakradhar himself openly rebelled against the conceptual or actually practised order of the *varṇāśrama* system.

[8] *Śrī Nāmadeva Gāthā*, Mumbaī, 1970, abhaṅg 890, 897.

[9] V.K. Rajwade, *Marāṭhāmcyā Itihāsācīṃ Sādhanem*, vol. XV, p. 6.

[10] *cālatā bolatā dev to jagī durlabh. Uttarārdha* 564.

[11] See Turner, Victor, *The Ritual Process*, Chicago, Aldine, 1969, *passim*, as followed by A.K. Ramanujan, *Speaking of Śiva*, Penguin Classics, repr. 1979, p. 34 f. The concepts of anti-structure and counter-structure were applied to the literature of the Mahānubhāv sect by Feldhaus, Anne, "The Mahānubhāvas and Scripture," in *Journal of Dharma* (Bangalore) III (1978), pp. 295-308. We do not deal

In the following we give some illustrations of Cakradhar's relationship to the law, the religion, and the social order in the Yādava kingdom. The evidence is from the *Līḷācaritra* which describes the life and teaching of Cakradhar as recorded by Mhāimbhaṭ immediately after Cakradhar's death with the help of informants. The whole work, edited by V. B. Kolte, contains 592 (*Pūrvārdha*) and 645 (*Uttarārdha*) *līḷās*.[12] Written in prose it has an authentic ring and reflects realistically the social and religious conditions in a Hindu kingdom which was now identified rather with a region and its culture than with a particular dynasty. The great amount of realism in the descriptions of the life and times of Cakradhar distinguishes the *Līḷācaritra* from much other Indian hagiographical literature.

2. Cakradhar and the *varṇāśrama* System

a) The *sannyāsī* beyond the Conventions of Society

Though Cakradhar was the fifth *avatār* of God (*parameśvar*), he had all the characteristics of a *sannyāsī*, a renouncer of the world.[13] He was traditionally born at Broach (Gujarat) in

11 (cont.)
here with the fully developed phases of the sect, but primarily with its "founder" and his relationship to the established order of religion, society and law as reflected in some of his teachings and 'divine deeds' (*līḷās*). For an introduction to the general background of the "sect" see Raeside, I.P.M., "The Mahānubhāvas," in: *BSOAS* XXXIX/3 (1975), pp. 585-600, also id., "A bibliographical index of Mahānubhāva works in Marathi", in: *BSOAS*/3 (1960), pp. 404-507.

12 V.B. Kolte, *Līḷācaritra*, Mahārāṣṭra Rājya Sāhitya Saṃskṛti Maṃḍaḷa, Mumbaī, 1978, 935 pp. The abbreviations *Pūrva*. (= *Purvārdha*) and *Uttara* (= *Uttarārdha*) have been used here.

13 Dumont, Louis, "World Renunciation in Indian Religions," in: Id., *Religion, Politics and History in India*, Paris/The Hague, 1970, pp. 63-104, and Thapar, Romila, "Renunciation: The Making of a Counter-culture?", in: Id., *Ancient Indian Social History. Some Interpretations*, New Delhi, 1978, pp. 63-104. Both works have influenced the general background of this article.

1194 as a son of a minister. His name was Haripāladev and he died young. When the dead body was taken to the cemetery, it was possessed and reanimated by the spirit of Cāṅgdev Rāul (*Pūrva.* 17) After spending some time as a prince at the royal household and living a married life, he grew tired of the world and left for a pilgrimage to Ramtek near Nagpur (*Pūrva.* 18 - 19). Then he took *sannyās* being initiated by Govindaprabhu, another *avatār* of Parameśvar according to the beliefs of the Mahānubhāv sect. With him he shared many anti-conventional attitudes.[14]

After this followed a period of twelve years of unsettledness (*Pūrva.* 21: *avasthā*), which began with indifference towards his own body (*Pūrva.* 21: *śrīmūrtīvari udāsya svīkarileṃ*) and a life in the forest (*ibidem: araṇyāmadhyeṃ bijeṃ karīti*). For twelve years he lived a solitary life (*Pūrva.* 21 - 1o5: *ekāṃk*) and then attracted his first follower, the elderly woman Bāisā, which was - so to say - the beginning of the "sect".

Curiously during his solitary wanderings, Cakradhar married again, a daughter of a merchant, for a short while. But, this only goes to show that he was God and thus beyond *jātikuḷa*, beyond caste and family restrictions (*Pūrva.* 32). Nor did he observe the rules of pollution in his dealing with women (*Uttara.* 384) and untouchables. There is a remarkable *līḷā* (*Uttara.* 72) which shows his accessibility for untouchables and at the same time reflects their longing for access to God:

> Three Mātāṅgas[15] came to the Jogeśvarī temple. They stood at the door. Two of them greeted the spire of the temple. Then they said: "Let's go." - "No,"[said the third,] "I shall not come without having seen this god [Cakradhar]." Thus they [the two] left. He waited. Āusā [16] came out. He said to Āusā: "My Lady, tell the Gosāvī [that] a man belonging to an untouchable caste (*bāhīrīlu pāiku*) has come and that he says: 'I shall not go without having seen this god'."

[14] Feldhaus, Anne, *The Deeds of God in Rddhipur*, (forthcoming).

[15] Members of the (then) untouchable Mātāṅga/Māṅg caste (Skt. *mātaṃga*).

[16] A female bhakta of Cakradhar.

Āusā went [and said]: "My Lord, Svāmī Jagannāth! A man belonging to an untouchable caste has come. He says: 'I shall not go without having seen this god!'."
The Gosāvī asked for some sweet (*lāḍu*) from Bāisā. The Omniscient said: "Go, give him the sweet and tell him, I have sent it."
Āusā came. He still stood there. She gave him the sweet. "Go away, Cakraśvāmī has allowed you to go." He said: "I shall not go without having seen him." He was not prepared to listen to her.
She came back [again]. He still was standing there on the same spot. "Why don't you go? Cakrasvāmī has allowed you to leave." - "No mother, I shall not go without having seen this god." Āusā told the Gosāvī: "Oh Svāmī Jagannāth, he says: 'without seeing this god I shall not go'."
So the Gosāvī came out. He stood near the door. [The Mātāṅga] put the sweet near the feet of the Gosāvī. Then he prostrated and started leaving.
The Gosāvī came back to the verandah and said: "Oh you desirous of *prasād*, will you take some *prasād*?" - "Yes, yes, [they answered]. "Who will not reach out his hand for rice with clarified butter? Who will not reach out his hand for cotton and silk garments? [But that is not the real *prasād*] I shall dive deep into this pool of muddy water and then, [whatever I shall bring forth, even if it is mud] *that* should be taken as *mahāprasād*. This is not the real *prasād*. How can *this* be taken as [real] *prasād*?" Thereupon he distributed the sweet amongst all.

Another incident concerns Cakradhar's meeting with a Camār, a member of the untouchable cobbler caste. The *līḷā* (*Pūrva*. 27) also discloses that the *Dharmaśāstra*, in this case a digest of *dharma* was consulted and applied:

There was a certain village near Bīḍ. The Gosāvī went there. He sat down near a water-hut. A Camār and his wife had gone to the market. They were returning from

the market. The Camār became thirsty. He came to drink water at the water-hut. At that moment he saw the Gosāvī sitting there. He came near. He prostrated, touched his feet and sat in front of the Gosāvī. He took out his betel-pouch. He cut a betel-nut into pieces [and] offered them to the Gosāvī. He folded some betel-leaves and gave them.

Then the wife of the Camār came from behind. He also gave a betel-leaf [to her]. Then he took one himself. Then she said: "Get up and move. The others have left." He said: "Wait a little." Again she said: "Get up and move. They are far ahead. [Everything] has become quiet. The cattle are on their way to the village. It is evening. Are you thinking of relieving somebody of his blanket? Get up and move." He said: "Wait! Wait a little." This happened twice, thrice. But he would not get up. She said: "Well, are you coming or not?" - "I am not coming." - "Shall I go then?" - "Go." She went ahead and came back again. Then she said: "If you don't come, then release me (*tari phedi mājhīye māthāṃcā hātu*). He said: "You are released. Go!" She said: "Who is witness?" - "This Lord is witness." She said: "My Lord, are you a witness?" The Gosāvī nodded approvingly. Immediately she left.

The Gosāvī offered betel. And he [the Camār] held out his hands. The Gosāvī took some betel out of his mouth. He [the Camār] ate the *prasād* and got into trance (*stīti*, Skt. *sthiti*). Immediately the Gosāvī left from there. The Omniscient said: "He came to the town Āmba of Khol Nāyak[17]. There, having become a godly man, he was having his [divine] play. He started living in a godlike manner (*isvaratvem varto lāgalā*). The people honoured him as it is becoming for a god. In every house they gave him a bath, anointed him, made *pūjā* with sandal paste and in-

[17] Khol Nāyak or Kholeśvar was a Brāhman general of King Siṅghaṇa II (1200-1246). Āmbe, Inscription, in: *Ind. Ant.* VI, pp. 97-8. Verma, op. cit., p. 93.

cense, and performed *āratī*. They kept his food on a big plate placed on a wooden stand. He slept on a cot with a mattress. Thus he was sitting [once] in a house being worshipped, having his meal, anointed with sandal paste, his forehead painted with holy marks, around the neck a garland of flowers, the *āratī* being performed, when a Camār of his village had gone to the market. He said 'are you not so and so Camār?'

There were some Brāhmans [nearby]. They said: 'Who is this?' He said: 'He is a Camār of our village. He belongs to our clan (*āmcā gotīyā*). His parents are waiting for him.' The Brāhmans said: 'Is it so? Oh my goodness! How the people are polluted now (*kaisā loku vīṭāḷilā*).' In this way one heard it from the other. More and more heard it. And [the Brāhmans] came to the place of Jagaḷdev and Vīṃjhadev. Jagaḷdev and Vīṃjhadev were the chief officers (*adhīkārī*) of that place. All the important people (*māhājana*) came to them. They told them: 'This Camār here has polluted the whole village. What should be done in such a case?'

Thereupon they called the Brāhman who knew the *nibandha* [digest of *dharma*] and asked him: 'This Camār has polluted the whole village. What should be done to him?' He looked into the *nibandha*. The following [conclusion] emerged from the *nibandha*: He should be placed in a heap of limestones.

Immediately they dug out a pit [and] seated him in it. On the top they kept heated limestones. They emptied bags of water over it. A crowd had collected. At that moment somebody came from the market. He saw the crowd and asked them: 'Why are there so many people?' They said: 'Don't you know?' - 'I don't know.' - 'The one who was playing here having become a godly man, has turned out to be a Camār. He has polluted the whole village. We have seated him in the heap of limestones.' He said: 'How can it be that you have seated him in a heap of stones? He is playing in the market. Go and see!'

On this they all came to the market. And there well-wor-

shipped he was playing as before. They recognised him. Allover the body [he was anointed with] sandal paste, lines of sandal paste were on his forehead. [On the lines of sandal paste] rice corns were pasted. Around the neck were garlands of flowers." The Omniscient said: "The garlands of flowers around the neck would not wither, nor would the *pūjā* [arrangement] be disturbed. Then all repented. They prostrated [and] said: 'My Lord, we are sinners and Cāṇḍālas. We have harassed you.' Then they left from there."

Cakradhar did not think much of the impurity caused by women during menstruation and stood similarly as the Vīraśaiva saints for equality of men and women, in any case in religious life (*Uttara.* 1o2):

"Do you think that their [the men's] souls are big and theirs [the women's] are small? Is the God protecting you different from the one protecting them?"

In fact, Cakradhar advises his disciples "that the living should live like the dead" (*Uttara.* 3o5) and thus keeps in line with the general notion that a *sannyāsī* is considered to be dead as far as *saṃsār* is concerned. However, as has been rightly observed, the *sannyāsī* still lives in the phenomenal world, *jagat*[18]. What is meant by *saṃsār* in this context is explained in *Uttara.* 585. Cakradhar teaches his followers the *asannidhāna-dharma*, the *dharma* to be observed in the case of his absence:

... Bhaṭo[bās][19] asked: "My Lord, the Gosāvī is confronting [us] with 'absence of his nearness' [that is, he will leave us]. What then should be avoided by a *mahātmā* while there is *asannidhāna*?"

The Omniscient replied: "Vānareyā[2o], one should not be

[18] Dumont, op. cit., p. 43 fn. 18.

[19] Or Nāgdev, who became the first *ācārya* of the Mahānubhāv sect, having been nominated by Cakradhar.

[2o] = "Monkey", the nickname of Bhaṭobās who was once seen by Cakradhar jumping from one branch of a tree to another.

a witness to money transactions (*dravyasaṃbandhā sākṣī na ṭhakāveṃ*). One should neither buy nor sell. One should not resort to violence. One should not have 'likes' and 'dislikes'. One should not distinguish between commandments and prohibitions (*vidhi-niṣedha*) [because a *mahātmā* is beyond them]. One should not visit *jatrās* (popular religious festivals) and *kṣetras*. One should not stay in towns and cities."

In other words, Cakradhar equates *saṃsār* to *vyavahār*, to the involvement in wordly business and affairs (*Purva.* 477).

b) Cakradhar's Attitude towards Scriptural and Folk Religion

Similarly, Cakradhar often turned against established ritual and religion whether based on scriptures or on folk beliefs. Thus he emphatically disclaims the need to go to *tīrthas* and *kṣetras*, because they do not lead to liberation. How could it be otherwise, if God in the form of Cakradhar is personally present? Thus when Mahādāisā, an elderly female devotee, intends to go on a pilgrimage to Mallikārjuna[21], after having already visited Dvārkā and Vāraṇāsī Cakradhar holds:

"My presence and service (*dāsya*) to me give liberation, *tīrtha, kṣetra, vrata, dāna* are of no avail for liberation. You should not leave from here." - "Yes, my Lord." And she touched his feet.

Thus he completely removed Mahādāisā' faith in *tīrtha, kṣetra, vrata, dāna* and in Dādos[22]. We notice that these are more or less exactly the topics with which the great ritualist Hemādrī professed to deal with in his *Caturvargacintāmaṇi*. But folk religion does not fare better in Cakradhar's attitude. One may, for instance, refer to *Uttara.* 316:

[21] Probably Śrīśailam in Andhra.

[22] = Rāmdev who was a devotee of Cakradhar and a former guru of Mahādāisā.

> Afterwards [the Gosāvī] took his seat in the temple of Jogeśvarī in Vāḍegāv. A certain person brought a sheep there. Bāisā said: "Please go. The Bābā is here." The Omniscient said: "My Lady, this one [the deity] says 'I shall take, I shall take [the sheep]'. He [the sacrificer] says 'I shall give, I shall give'. Let's go from here. One should not remain in a place which is marked by passion and darkness (*rājase tāmase sthānīṃ na baisāvem*)."
>
> After that the Gosāvī proceeded to the temple of Nṛsiṃha. There he stayed for the night.

The Nṛsiṃha temple may not have been an ideal place either, because elsewhere Nṛsiṃha is considered to be a spirit (*bhūt*) rather than an *avatār* of Viṣṇu (*Uttara.* 6o1). Eventually the deities (*devatās*) were canonized in hierarchical order of eight classes, but God (*parameśvar*) retains his essentially monotheistic position.[23]

Cakradhar is particular to stress faith instead of ritual (*vīdhi*): "Is there any king or master for faith (*bhāv*)? Faith is fluid [or:changing]," he says, implying that ritual becomes rigid (*Pūrva.* 395).

c) The *sādhāraṇa dharmas* as Enunciated by Cakradhar

As so often in the case of renouncers of *saṃsār* we also find in the *Līḷācaritra* ethical, exemplary attitudes and utterances of Cakradhar which were to be codified later on in the *Sūtrapāṭh.*[24] These attitudes and utterances were in demand in a society dominated by *svadharmas*, that is rigid caste and family rules, and prescribed rituals. The roles which had to be played in *saṃsār* could be oppressive unless there existed the *sannyāsī*, saint, or god who could provide philosophical and spiritual insights which could be interpreted and applied

[23] See Feldhaus, Anne, "The *devatācakra* of the Mahānubhāvas," in: *BSOAS* XLIII/1 (1980), pp. 101-109.

[24] See Feldhaus, Anne, *The Mahānubhāva Sūtrapāṭha*, New Delhi, Manohar Book Service (forthcoming).

to day-to-day life and even to juristic contexts.[25] For some only in this way life in the *saṃsār* could be worth tolerating. No doubt, even the Dharmaśāstras had before recognized this and their authors had interiorized and interpreted much of the teaching as *sādhāraṇa dharmas* which ultimately had to be the base of society and of the true *dharma*. We may refer to the famous passage of the *Yājñavalkya-smṛti* (III. 65 - 6)[26]:

> The (outward show of the) *āśramas* [especially of the *sannyāsī*, but *a fortiori* that of the student or householder] is not the efficient cause of *dharma*, for that comes about only by being *done*. Consequently whatever is not agreeable to one's own self should not be done to others: Truthfulness, not stealing, absence of anger, modesty, cleanliness, discrimination, courage, equanimity (including humility), the quality of subjugating the senses, and knowledge: these comprise all *dharma*!

[25] That ***sādhāraṇa dharmas***, principles underlying the whole Hinduism and based on philosophical and religious insights and behaviour of a high degree, should also rule in a juristic context and much more so in modern times when the guidance of caste dharmas and caste rituals are on the wane, was emphasized by Derrett in: *A Critique of Modern Hindu law*, Bombay, 1979, p. 34 ff. See also Sontheimer, G.D., "Die Ethik im Hinduismus," in: Ratschow, C.R. (ed.), *Die Ethik in den Weltreligionen*, Stuttgart, 1981, pp. 349-436, p. 420 ff. on the ***sādhāraṇa dharmas***. There are many examples throughout Cakradhar's *līlās* which show e.g. his kindness, patience, courage, knowledge, humaneness, obedience to his guru (Govinda Prabhū or Śrī Prabhū), though the principles do not necessarily appear ***expressis verbis*** and are as yet unsystematized and unenumerated. As regards ***asteya*** (abstention from theft) which appears in practically all Sanskrit (Dharmaśāstra) formulations of ***sādhāraṇa dharmas*** Cakradhar is less emphatic: he protects a thief (see below), condones and takes the moral blame on himself of a theft of chick-pea bundles by his followers which was in excess of what he had originally connived at. He does not mind to get the chick-peas roasted rather stealthily and participate in eating this delicacy (*Uttara*. 15).

[26] Cited and as translated by Derrett, op.cit., p. 71 f.

It often remained the function of the saint or god who was beyond society and yet involved in it to reactivate these principles by their teaching and life. There are frequent references to Cakradhar's kindness (*dayā*), thus when he condones an adulterer (*Uttara.* 271), or when he stresses *ahiṃsā* by protecting a rabbit which he calls a *mahātmā* (*Pūrva.* 42) and thereby incidentally converts the hunters to follow *ahiṃsā*. He inculcates that one has to act towards others in a way to assure *abhaya* - freedom of fear (*Uttara.* 368). One should help people on one's own inspiration and there is no need that Cakradhar specifically tells to do so (*Uttara.* 216). *dharma* and *ācāra* is his who actually practises it. "Why do you worry about the *dharma* of others?" (*Uttara.* 4o3).

d) The *sannyāsī* and Law

It is only logical that a *sādhāraṇa dharma* emanating from the sphere of the renouncer must occasionally conflict with the rules of law administered by the state and the customary law, practised by society. Cakradhar is beyond this law and there may be an appeal to his divine powers - similarly as ordeals may be used as a last resort in resolving cases[27] - if decisions taken by courts like a *sabhā* seem dissatisfactory. One incident concerned the inheritance to a *maṭha* (*Uttara.* 72):

> There was a *sannyāsī* in a monastry. He had two disciples. One of them used to serve him. The other used to study. After many days the *sannyāsī* died. His two disciples quarrelled. One of them said: "The books of the monastry are mine." The other said: "The books belong to him who

[27] Witnesses and documents as evidence were preferred to ordeals by the Dharmaśāstra in legal procedure, because of the emotional element involved in ordeals. See Sontheimer, G.D., Derrett, J.D.M., Smith, G., "Gerichtsverfahren und Richter im traditionellen indischen Recht," in: Viehweg, Theodor, und May, Reinhard (eds.), *Beiträge zu indischem Rechtsdenken*, Wiesbaden, 1979, pp. 74, 82, 84. - In this *līlā* it seems that *dāsya* - devoted service to God is preferred by Cakradhar to mere *jñāna* and thus he miraculously enables the serving disciple to read the texts.

reads them." Accordingly they brought the matter before a *sabhā* and presented the issue. The *sabhā* held: "The monastry belongs to him who reads the books." The books were brought. They were given to the one who could not read. He could not read them. Thereupon they were given to the other for reading. He could read them. They gave the books to him. The other was dismissed.
The Gosāvī came to this place. He sat under a tree. That disciple came there and greeted him, touched his feet, and told him [what had happened]. The Omniscient asked: "Is your case (*sthaḷa*) victorious?" He said: "I can't read." The Omniscient said: "Call a *sabhā*. Start reading and you will read."
He called a *sabhā*. The books were brought and given to him. He started reading. All [the members] of the *sabhā* joined [unanimously] in clapping their hands. The monastry and books were given to him. The other was dismissed. The [winner] offered the Gosāvī a meal. He [the Gosāvī] slept on a platform. Then the Gosāvī was to leave. But he would not allow the Gosāvī to leave. The Omniscient said [recalling the incident]: "Bāi[28], I had to quarrel with him so that I could leave."

The presence of Cakradhar also provided safety and even impunity to all kinds of beings (*jīvas*). In the incident of the rabbit and the hunters, he is a protector of animals (*Pūrva.* 42). The hunters may be following their professional *svadharma* of a hunters' caste, but, the conception of *dharma* is different on the divine level of Cakradhar, and it is the *dharma* protecting animals or human beings in the company of Cakradhar, the *sāṃghātu dharma* (*Pūrva.* 191) which applies here. Thus there is also the case of the thief whom Cakradhar saves notwithstanding the theft or robbery he committed. On the other hand, it is the prime duty of the king to look after justice (*nyāy*) and to persecute thieves. Thus *daṇḍa* and *sāṃghātu dharma* conflict (*Pūrva.* 57):

[28] Bāisā, the elderly woman who was Cakradhar's first follower.

In a certain village the Gosāvī was seated in a temple. In this village a robbery of horses occured. The horses of the village officer (*adhikārī*) were stolen. One of the thieves was confined in the stocks. The watchmen came in search [of the other thieves]. Then there was the Gosāvī seated in a dilapidated temple. They saw the Gosāvī [and shouted]: "Who is he?"
The Gosāvī was desirous of keeping silence (*maunā*). Therefore he remained completely silent. They shouted: "Catch him - catch him! He has come to free him!" They caught hold of the Gosāvī and said: "Come on." The Gosāvī was brought to the wooden stocks. "Put them on, put them on." The Gosāvī put his holy feet into the stocks. Then they tried to lock the stocks by hammering a bolt into them. But the arm of the one who tried [to hammer] remained raised in the air. He said: "Oh dear, I can't hammer the bolt in". Then somebody else tried. Similarly, nobody was able to hammer it in.
They went to the village officer to tell him. "Some other thief has come to free the thief. We have caught him. We put him in the stocks. When we tried to hammer the bolt in, the arm went up, but it would not come down." Thus they told him this account.
Then the village officer mounted a horse and came with a torch. When he saw the beauty of the Gosāvī, he said: "What's the matter, you sinful Cāṇḍāḷas! Who asked you to act like this? What is this! You have confined the Gosāvī [in the stocks]?" He climbed down from the horse, prostrated clasping the holy feet, and requested the Gosāvī: "Please, remove your feet from the stocks." The Omniscient said: "First free my companion." - "My Lord, he has committed a grave illegal act (*eṇeṃ thorū anyāyo kelā ase*)". The Gosāvī answered: "Well then, I shan't remove [my feet]". - "Break his bolt!"
The carpenter was called and the bolt was removed. Only then the Gosāvī removed his feet. Then the village officer requested to let him take him to his home: "Please, come to my home." The Omniscient said: "First my com-

panion." - "My Lord, he is a thief." The Omniscient answered: "He is *your* thief, but he is *my* companion." - "Let's go."
He, the thief, [went] in front. The Gosāvī followed. Thus they proceeded to the house [of the village officer]. They arranged a seat for the Gosāvī and he took his seat. He made his companion sit down. The holy feet of the Gosāvī were washed ceremoniously. The feet of the thief were also washed. Then he offered bathing clothes to the Gosāvī. The Omniscient [said]: "First to my companion." Thus they gave bathing clothes to him. They anointed his body. Then the Gosāvī had his massage. Water was kept ready. "Please, come for your bath." The Omniscient said: "First my companion." So he had his bath. Then the Gosāvī had his bath.
Then they brought the dinner and said: "Please, have it." Again the Gosāvī said: "First my companion." He was served, too. He had his meal in the same row like the Gosāvī. They brought betel-leaves. Again the Gosāvī said: "First my companion." The Gosāvī was served betel-leaves. He [the thief] was also served betel-leaves. They kept a cot and a mattress. For him [the thief] they kept a small cot. The Gosāvī accepted to sleep (*Gosāvī pahuḍu svīkarilā*). He [the thief] slept.
Then, in the middle of the night, the thief requested the Gosāvī: "My Lord, I did a grave illegal act. The Gosāvī will go from here and they will beat me. They won't save me. My Lord, shall I leave then?" The Gosāvī gave him the permission. "My Lord, the door is closed. How can I go?" The Omniscient said: "Make a folded rope out of clothes, tie it to the back, and leave this way. Get down."
Thus the Gosāvī told him a way out. Thus he went. Then next morning he [the village officer] asked him [Cakradhar]: "My Lord, where is your companion?" The Gosavi said: "He has already left." Thereupon he said laughingly to the Gosāvī: "The Gosāvī has let his companion run

away." Then the Gosāvī put on his own clothes [and] kept the clothes [given to him by the village officer]. Then the Gosāvī left from there.

Theft and adultery are common in the Kalīyuga according to Cakradhar (*Uttara.* 271): "Rare is one who does not commit theft and adultery which is the *dharma* of Kalīyuga". He tells this to a moneylender who has been hiding in a temple for three days because of a charge of adultery against him. Cakradhar compassionately grants him protection, saying 'Go now, nobody will touch you!' Gratefully the man requested Cakradhar to accept refreshments.

e) Cakradhar's Support of *gṛhastha-dharma*. The Function of Family Property, the Necessity of the Son and the Position of Women

Cakradhar may have been in many respect beyond the conventions and law of society, but he did not underrate the importance of family life and the *gṛhastha-dharma* which play a central role in the *Dharmaśāstra*. His *bhakta* Nāgdeo, for instance, once took a group of Brāhmans who were *mahājanas* to him and requested to explain the *sannyāsa-dharma*, but Cakradhar refused and explained the *grahasta-dharma* [*sic*] instead (*Pūrva.* 555): "What use is the *sannyāsa-dharma* to you? Why don't you ask me about what you are?"

Family and property are basic institutions of the life in the *saṃsār* and this commonplace is also very much evident in the *Līḷācaritra*. In the *Dharmaśāstra* the adjustment of the claims by various rival "owners" (*dāyādas*) as regards family property is a central subject (*dāyavibhāga*). Especially the *Mitākṣarā* commentary on the *Yājñavalkya-smṛti* was a foremost authority in this field in the Deccan.[29] In the *Līḷācaritra* relatives are also called *dāyādas*, or rather *dāḷadrī* (*Pūrva.*

[29] For the ***Mitākṣarā*** (between 1121-25) see e.g. Sontheimer, G.D., ***The Joint Hindu Family***, New Delhi, 1977, p. 120 ff. The commentary was written by Vijñāneśvara, a Chief Justice of the Cālukya King Vikramāditya IV. ruling from Kalyāṇī in northern Karnataka.

439) and *dāiṃ* (*Pūrva.* 387). That they could be rivals with their claims on each others' property is indicated in one *līḷā* (*Pūrva.* 387): A certain Brāhman complains to Cakradhar that his *dāiṃ* have encroached upon parts of his field and he requests him that this encroachment should be removed.

To avoid the claims of collateral *dāyādas* must have been one of the reasons which prompted Vijñāneśvar, the author of the *Mitākṣarā*, to establish the son's right by birth in the father's and grandfather's property.[30] Besides, the necessity of a son who has to continue the life in the world is another commonplace not only in general Indian belief and the *Dharmaśāstra*, but also in the *Līḷācaritra*. In one *līḷā* (*Pūrva.* 63) Cakradhar is invited home by a wealthy landlord (Ṭhākur) who is polygamous, but without son. He sends first his elder wife to him with the request for a son, but Cakradhar refuses to oblige. Subsequently the landlord sends his younger wife to him. Again he shows his disinclination to let her in. Ultimately the Ṭhākur comes himself and requests:

> "My Lord, why does the Gosāvī not accept? I am without son. I have no son (*mi nīputriku. māteṃ putru nāhīṃ*). The Gosāvī should make a gift of a son to me."
> The Omniscient said: "You will have a son." He had a son after some days and months from his elder wife. When the son was born the Gosāvī went away.

Not having a son is also a divine punishment for administering an expiation which may be justified by the *dharma* of the society, but violates divine justice and equity. Thus the Camār in the *līḷā* quoted above may have broken the rules of pollution and he may have been quite legally put to death. However, his contact with Cakradhar had deified him. On the question of Māhādaisā what had happened to the persecutors and executors Cakradhar answered: "My Lady, their race died out (*Bāi, teyācā nīrvaṃsu jālā*)."

[30] See Sontheimer, op. cit., pp. 124 ff. *Yājñavalkyasmṛti*, with the *Mitākṣarā* of Vijñāneśvara, Nirnayasāgara Press, 5th edn., Bombay, p. 217 f.

Son and father have joint property in whatever the father earns. This is in accordance with the *Dharmaśāstra* texts of that time, especially the *Mitākṣarā*.[31] It is reflected in a *līlā* of the time when Cakradhar was still Haripāldev, the son of a minister (*Pūrva*. 27). The son had incurred heavy debts while gambling and the minister said to his sullen son:

> ..."Your debt is [as good as] paid off, my boy. Does not all this belong to you? For whom else have I earned it? Whose estate is this? This is all yours, isn't it?" Having said so he put his left arm under his [the son's] back and took him up placing him on his lap. After he had seated him on his lap he fondled [and] embraced him. He kissed him. Then he made his treasurer [go and] pay off directly their [the creditors'] fivehundred *āsus* (gold coins). After that the Gosāvī [*sic*] gave up his sullenness ...

In another *līlā* we learn that Cakradhar was very much aware that property ought to serve as maintenance for dependent female members of the family and that the male members have the duty to maintain them. They cannot prematurely renunciate wordly life. Thus he sent his disciple Bhatobās, who had taken *sannyās*, home to his village to organize the maintenance of his wife Gaṅgāisā and to beget the necessary son! She had complained to Cakradhar with the following words (*Uttara*. 32):

> ..."What shall I do? I have no wealth (*dhan*), no father, no brother. My brother-in-law doesn't give me my share of grain (*vaijobā varo na ghalī*). There is no milk for my [female] children. How can I survive with just one earthen pot with me?" ...

Cakradhar orders her husband to provide for his wife (*Uttara*. ibid.):

> ..."Take her to the village. Give to her what is rightfully due to her. Make a home for her and do what she says. A soul is waiting for you." ...

[31] *Mitākṣarā*, p. 219 (H.T. Colebrooke's transl. in *Two Treatises. Mitākṣarā and Dāyabhāga, Mit.* I, i, 19-24, 27).

A number of destitute women ultimately found their security as followers of Cakradhar. This was also a cause of danger to Cakradhar's reputation and life, as we shall see. One of the causes for sonless widows to become destitute was that the sonless widow's right to property of her deceased husband was, according to the *Mitākṣarā*, dependent on whether her husband died separate and unreunited from agnatic relations, like the husband's brothers etc. This must have been a rare occurrence.[32] But even if he died separate and the sonless widow could inherit according to the *Mitākṣarā*, the danger that the king took the estate by escheat was very near at hand.[33] This, the sad case of Śāntibāisā (*Pūrva*. 217) discloses, throwing incidental light on the position of women in the Yādava kingdom:

> Śāntibāisā was from Vasmatī. Her [actual] name was Māimbāisā. Her husband had expired. Her son had died. Whatever wealth (*dhan*, or elsewhere: *dhanakuḷavādī*= wealth, land, and agricultural implements) there was, had been taken by the king. Her eldest daughter Ekāisā was a widow (or: "empty-handed"). Her younger daughter was Jasamāisā. She became possessed [by an evil spirit]. Her husband did not like her. Her parents-in-law did not like her. Her younger brother-in-law also disliked her. They drove her away. Māimbāisā brought her to her place. In this way Māimbāisā became very miserable. When [some] people prepared to leave [for a pilgrimage] to Dvārāvatī, Māimbāisā said to herself: "Now I shall go to Dvārāvatī. I shall tie one [daughter] to my back and the other in front. Then I shall enter the sea"...

[32] See Derrett, *Religion, Law and the State in India*, pp. 2o8, 416. *Mit.*, p. 242 f; Colebrooke's transl. II, i. 39. Sontheimer, op. cit., p. 134.

[33] Śāstric law provided that property of Brahmans would never escheat. Gautama XXVIII, 42; Baudhāyana I,5, 119, 122; Vasiṣṭha XVII, 75; Manu IX, 189. But according to inscriptions and other sources it is clear that property was often seized by the king or his assignee in the absence of sons, grandsons, or great grandsons and that it was a great favour on the king's part to allow property to pass to śāstric heirs. Derrett, *Religion, Law and the State in India*, p. 208.

Before Māimbāisā went to Dvārāvatī she met a sister's son, Sārangapandit[34], in Paithan. He advised her to meet Cakradhar on her way to Dvārāvatī. Meeting Cakradhar her sorrow vanished and her daughter became freed from the evil spirit by Cakradhar's healing powers. Cakradhar exhorted her to proceed to Dvārāvatī. Māimbāisā, however, decided to stay:

> ..."No, my Lord, this is my Dvārāvatī. I have met our Kānhā (Krsna) here itself. I shall not leave the nearness of the Gosāvī..."

Cakradhar, however, insisted that she first take her daughter home to her relatives by marriage. The daughter was miraculously received with full honours and great joy.

f) The Interdependence of the *sannyāsī* and Society

Cakradhar as a *sannyāsī* and a divine personality must have functioned as a leaven in society and must have been a relief to many living in the *samsār*. He embodied in his life and teachings the *sādhārana dharmas* and had the power of healing (see e.g. *Pūrva*. 54, 92, 116, 232) and destroying *karma* (*Uttara*. 35). On the other hand, he was likely to become dependent on society and was in danger of getting more and more involved in *samsār*. He must have been aware of the constant age-old tension between the demands of his initiated or uninitiated followers and the demands of a secluded sannyāsīc life. His constant wanderings and elusiveness show his attempt not to be a burden to society by attaching himself to definite villages and households for his and his followers' alms (*bhīksā*). Accordingly he taught his follower Nāthobā the rules of begging alms (*Pūrva*. 223: *bhīksāvidhi*) citing first a Sanskrit passage:

> ... For begging food one should go to the four *varnas* (*cāturvarnyam cared bhaiksam*). One should follow this rule of the *śāstra* (or: this principle?). One should not select a [certain] house for begging *bhīksā*. One should

[34] A famous Brahman with influence in the Yādava court who is to play an ambiguous role in the case against Cakradhar.

not go to a house of an acquaintance. One should enter [the village] from one side and leave it from the other.

Gifts (*dāna*) and provisions for maintenance (*vṛtti*[35]) are primarily to be given to persons and institutions which fulfill socio-religious functions according to the notions and concepts of the *varṇāśrama* society, e.g. to Brāhmans, for the building and upkeep of temples, or to established, longstanding religious orders and their monasteries. Sannyāsīc recluses at the most can claim *bhīkṣā*. Thus (*Uttara*. 306) when Cakradhar once went to the Saṅgameśvar temple on a Monday, devotees came in particularly large numbers for the *piṇḍa* and *tarpaṇa* rites. They also worshipped Cakradhar and by evening a large heap of offerings had collected in front of Cakradhar. But he admonished Bāisā to leave the offerings to the priest of the temple, because they rightfully belonged to him. For Cakradhar *bhīkṣā* represents independence and bliss (*Pūrva*. 510: *bhīkṣā rājyā, bāi*).

The avoidance of worldly involvements even extends to contacts with the king. Though the saint, a divine personality, a *sannyāsī* or *sādhū* may be an objective advisor to those in charge of the affairs of the world, Cakradhar avoids the contact with kings and their gifts very much as Tukārām refused the gifts of king Śivājī.[36]

One famous *līlā* (*Pūrva*. 61) reflects the relationship between Cakradhar and the king, in this case Kṛṣṇadev (or Kānhadev):

The Gosāvī was staying in the Bahirav (Bhairav) temple at Lonār Kund. The king came to the Kund for the Monday [ritual]. With him was [his son] Mahādev who was being caressed [by his father]. He asked the priest there:

[35] See e.g. *Pūrva*. 116: A *sāsan* [*sic*] enjoined a *vṛtti* to the temple of the Brāhman of Vaijanāth and provided for a field, house, bedding and cot, one (female) buffalo, a female servant, and sixty gold coins (*āsus*).

[36] *Tukārāmabāvāṃcyā Abhaṃgācī Gāthā*. Mumbaī, 1950 (Govt. edn.), *abhaṅg*, 1884-1897.

"Is there some Siddha or a [*mokṣa*-seeking] ascetic (*sādhak*)?"A priest of (the Goddess) Kamalajai said: "One holy man (*purukha*) has come to the Bahirav temple. How can I tell his handsomeness? How can I describe his intelligence? How can I express his glory? How can I tell his generosity?" In such words he gave a description of the Gosāvī. Then it occurred to Kānhadev: "Where can I meet this holy man." Immediately Kānhadev went to the Tārātīrtha. There, at the Tārātīrtha, the Gosāvī was sitting under a Banyan tree. The priest had come along with Kānhadev. He said: "This is the holy man." Kānhadev went straight in front of him. He asked the betel servant for a purse of gold coins. He put it in front [of Cakradhar]. He prostrated. The bard and the groom said: "Take it! Take it! Kānha, the son of Sīṅgaṇa, is pleased with you." The king, however, said: "Move away. King or pauper are the same to him. I am Kānha, the son of Sīṅgaṇa, only for you." On this the Gosāvī looked at them. He also looked at the king. And [the Gosāvī, having nothing to say,] looked on the floor. The king said: "To him gold and mud are the same. He showed me that wealth and stone are the same."[37] Afterwards he kept a secret watch [on the Gosāvī]. For some time the Gosāvī remained sitting. Then he went forth. [The man] who had kept the watch came with the purse of gold coins: "King, this holy man has not touched the purse of gold coins." - The Gosāvī [recalling it] said: "This king had full regard for me [or: is a believer]. He has not returned the wealth once assigned [to a holy purpose] to the treasury. Afterwards he built a wall for [the temple of] Kumāreśvara, and had it whitewashed." One Mahānubhāv says: "He built a bathing *ghāṭ*."

In another incident we come to know about an attempt of King Mahādev (1261-1270) to meet Cakradhar (*Pūrva*. 225f.) whose

[37] The terms used by Tukārām are similar, e.g. wealth and mud are the same to me (1897), gold and mud are the same to me (1895), ant and king are the same to me (1895).

fame had spread to such an extent that the king found one day his court empty, because all courtiers had left to have *darśan* of Cakradhar. King Mahādev also decided to meet Cakradhar. While on his way an inauspicious omen occurred and the king was held back: the royal elephant had collapsed. The second attempt was marred by heavy rainfall which sent the king back to his fort (*Pūrva.* 226). On the third day the king made a firm decision to meet Cakradhar. However, Cakradhar slipped away apprehending that the king might hand over his kingdom to him (*Pūrva.* 227).

The desire of a king to hand over his kingdom to a saint or a god and then to rule on behalf of him was not an uncommon occurrence in Indian tradition. Gorakhnāth, Rāmdās and king Śivajī etc. come to mind.[38] What is more remarkable is that Cakradhar refused this possibility. The reason is indicated in the same *līlā*. His faithful follower Bāisā, the old widow, questioned him why after all he did not allow the king to meet him. Cakradhar retorted: "And where will you poor, destitute people go?"

Though Cakradhar tried to keep away from involvement in the world, it is natural that his following of initiated and uninitiated eventually resulted in a "sect", a kind of parallel society. Rules had to be evolved to regulate the behaviour of the followers and metaphors were drawn from the institutions which rule in the *varnāśrama* concept and in ordinary social life. The institution of marriage e.g. offered a metaphor for the relationship between alms-bag and *sannyāsī* (*Pūrva.* 223): Cakradhar gave Nāthobā an alms-bag and exhorted him:

> ... "From now onwards this bag should be married to you. It is yours. Upto your death you should protect it..."

This is reiterated in one *līlā* (*Uttara.*2) when another

[38] Śivājī handed over the kingdom by placing a note in the alms-bag of Rāmdās (*manmatha nāma saṃvatsarī vaiśākh śuddha dvitīyes Śivājī mahārāj yaṃnī samarthāṃcyā jholīt rājyācī cithi ṭākalī*). *Vāṃkenīsicyā 26vyā tipaṇ*, as quoted by Altekar, S.K., *Śrī Samartha Caritra*, 2nd edn., Puṇem, 1974, p. 68.

disciple, Bhātobās, is given a bag: ..."You and this bag are married. Don't let her fast and starve. This rule (*vidhi*) should be observed upto death..."

3. The Administration of Justice and the Case Against Cakradhar.

a) Some References to Law, Courts, and Legal Procedure in the *līlācaritra*

The *līlācaritra* is a non-legal work. The more it is surprising to notice the number of references to *dharma* and its conception on different levels. We get the impression that the heartland of the Devgiri Yādavas must have been strictly administered in secular and religious matters. As the case of the Camār (*Pūrva*. 27) shows, the official authorities of the state supported the administering of expiation (*prāyaścitta*) by Brāhmans on the basis of the *śāstra* in cases of ritual pollution. *Ad hoc* courts existed which consisted of respectable village and town elders (*māhājanas* or *mahājanas*) who might decide in spiritual (if they were Brāhmans) as well as in strictly legal matters. For instance the *māhājanas* may, rather informally, it seems, confirm miracles of Cakradhar (*Pūrva*. 14). Once (*Uttara*. 277) Cakradhar and his followers were accused by a Gujar (i.e. a person from Gujarat) of having taken away a coconut with a gold coin in it which was buried in a deserted hut. Cakradhar occupied the empty hut. He asked his follower Bhatobās to take the matter to the court (*yāsīm vevhāru* [Skt. *vyavahāra*] *sāṁghom jā*). The court consisted of *māhājanas*, that is, according to a *var. lect.*, of Brāhmans of the village (*gāvīcām brāhmanīm*). Bhatobās effectively silenced (*nirotaru kelā*) the accuser by his *vevhāru* which may mean in this context "by his telling evidence as to the true facts:"[39]

"We have not heard about his coconut. We don't know what sort [of coconut] it is. He left a hut which was deserted." Thus he proved it. Thereupon all the *mahājanas* said:

[39] According to Kātyāyana 26 the term *vyavahāra* etymologically means 'the removal (*hara*) of various (*vi*) doubts (*ava*)' in legal procedure.

"What has he to do with your coconut. You lie flat in front of his Gosāvī with your body covered with cowdung and mud. Go. He will tell you of the whereabouts of your coconut."

Bhatobās told Cakradhar about the decision (*vevastā*, Skt. *vyavasthā*). The Gujar acted as he was told and the coconut was retrieved from a friend of the Gujar.

In the case of the inheritance to a *matha* we have seen that a *sabhā* was called which also consisted of *māhājanas*. The instituting of court procedure was called *sabhā karnem* or *vevhāru sāmghnem*. Legal transactions included pledges (*Uttara*. 303: pledge of an earring, *Pūrva*. 233: pledge of a betelnut cutter), loans (*Pūrva*. 452: *runa*, Skt. *ṛna*), and even the sale of human beings (*Uttara*. 182)

b) The Case Against Cakradhar in the *sabhā* at Paithan

Eventually Cakradhar came in conflict with the order of established society. According to one *līlā* (*Uttara*. 266) he was conscious that the people might be objecting to the presence mostly of women in his following. A strange incident is told in another *līlā* (*Uttara*. 509). The rejected wife of Hemādrī, by name Dematī, came to have *darśan* of Cakradhar. She applied sandal paste from the feet of Cakradhar on her forehead. Surprisingly, she was taken back by Hemādrī. When he wondered about the reasons of his renewed affection to Dematī, she told him of the *darśan* of Cakradhar, attributing the reason of Hemādrī's affection to this *darśan*. Cakradhar resented the rash disclosure by Dematī because he knew that Hemādrī did not agree with him and his followers. He sensed that Hemādrī may plan some mischief. Whatever the real reason had been - whether it was the objection against the (mostly elderly and destitute) women amongst his following or whether it was his life and teaching considered to be against the principle of a kingdom ruled according to the conception of an orthodox *varṇāśrama* system - the events drew to a climax (*Uttara*. 536):

Thereupon the Gosāvī crossed the Gaṅgā [Godāvarī] river and went to Paithan. This was the moment when they in-

stituted a *sabhā* in the Mudhāditya temple. [There were present] Hemādpandit (Hemādrī), Sārangapandit, Māyitā Harī, Prajñāsāgar leading all the people of the town, the Mahājanas, scholars, expounders of Purāṇas, Sannyāsīs, Brahmacārīs, Jains, and members of the Nāthpanth - thus they all were assembled. They brought the Gosāvī into the Mudhāditya temple. The Gosāvī sat down in the square of the Mudhāditya temple. All said: "So - you are a Gosāvī[40], are you!" - The Omniscient said: "I am a Bhiksu Mahātmā." "Now you tell us [what you really are]?" "Everyone of you who has assembled here is one by one a leading person: scholars, Brahmacārīs, Sannyāsīs, people having vowed to live only on milk (*payovratī*), exponents of the *śāstra*, expounders of the Purāṇas." And he looked at Sārangapandit [who] avoided his eyes. "You are the Māhājanas of the people of the eighteen 'castes' (?, *aṣṭadasā prajā*),[41] Jains, Nāthpanthīs - thus all of you are assembled. You would not drink knowingly [something which is] sour. Then ask yourself what I am." "He has a special attraction to women, hasn't he? He behaves with women in a manner we prefer not to speak about, doesn't he?" All acclaimed: "Yes, indeed." There was unanimous clapping in the *sabhā*. Then everybody started whispering to the other. At that moment Māyitā Harī [and] Prajñāsāgar, both of them got up: "That you whisper is wrong!" They disassociated themselves from the whispering. "This is bad for the country. You are Cāndālas!" With these words they left.
The Omniscient said: "Each of you is a knower of the Veda. Everyone of you seated here is a leading person. You ask yourself what I have done to you." "We have thought about it." "Is it so? Then *do* what you think [fit to do]." After that they took him to a small shrine

[40] 'Gosāvī' implies a person that has renounced worldly business, pleasures, and affections.

[41] *aṣṭadasā* = *aṣṭadaśa*. Cp. D. C. Sircar, *Indian Epigraphical Glossary*, Delhi, 1966, p. 31 f. *aṣṭadaśa* implies 'all' and 'completeness'.

> inside the enclosure [of the Mudhāditya] temple. There he accepted the *pūjā* of the nose.

The "*pūjā* of the nose" is a euphemistic and reverent way of saying that Cakradhar's nose was cut, according to another source along with his ears.[42] The description in the *līlā* suggests that the whole procedure of the *sabhā* was premediated and manipulated. The whispering may indicate that the full truth was not brought to light. In any case two forthright members spoke out and did not lend themselves to a unanimous decision (*samaya*). They drew their consequences from this miscarriage of justice (*Uttara*. 537):

> Māyitā Harī [and] Prajñāsāgar disassociated themselves from the whispering. They left [and] went home. They left their spacious and rich houses, left kith and kin, [and] wealth. They left the country. Māyitā Harī Nāyak left his mansion and went to Telaṅgaṇa. He tied a purse with gold coins to his waist. In one hand he had a sharpened stone, in the other he held his wife. With bullocks [and] a bullock cart - thus he left. One person [standing] on the upper storey [of a house] said: "Rob him of his wife. He has not accepted our *samaya*. Throw him out, throw him out of our Maharashtra." Māyitā Harī retorted: "Is my wife yours or your father's? I am leaving your Maharashtra of the Mahārs on my own."[43]

We need not unduly prolong the story. Cakradhar continued to teach and even had his nose restored miraculously. But he was resigned to leave this world, not before having forecast the incursions of the Mlecchas from the north and a devastating famine (*Uttara*. 603).[44] Both events actually occurred. Cakra-

[42] See fn. 4 to *līḷā* 536 (p. 670).

[43] A caustic pun on the words 'Mahārāṣṭra' and 'Mahār'. The Mahārs are the famous 'autochthonous' untouchable caste of traditional Maharashtra.

[44] For the Durgā-Devī-Famine (1396-1407) see Sontheimer, *Birobā, Mhaskobā und Khaṇḍobā*, p. 15o.

dhar himself was finally murdered on the instance of the king or Hemādrī (*Uttara*. 641). But according to the beliefs of the Mahānubhāvs this cannot be true. Cakradhar left Maharashtra wandering to the northland and was last seen in Ujjain (*Uttara*. 645).*

* I am grateful to Dr. S.G. Tulpule for his help in translating the *līlācaritra* and his critical comments on this article. Sanskrit terms used mainly in a Sanskrit form or context (e.g., *varnāśrama*) have been transliterated according to the usual indological practice. Marathi terms are transcribed in their spoken form or are transliterated as they appear in the *līlācaritra* (e.g., *stīti* instead of *sthiti*) and without the final inherent *a* (e.g., *dev* instead of *deva*).

GANDHI'S EGALITARIANISM AND THE INDIAN TRADITION

Dieter Conrad

I.

Does Gandhi belong into the context of the "specifically Indian outlook" which is perceived by us and has its peculiar attraction as stemming "from India's very old and consistent experience"?[1] Or is he somewhat out of place here, too much a son of this age of confused traditions, perhaps guilty of "Imitation of the West masquerading as a redefinition of the ancient past"[2] - pointedly: should he rather be seen as a disguised Westerner, misinterpreting and even subverting India's true traditions? It is indeed with some hesitation that one introduces him into learned shastric discussion - mindful of his often cursory and peremptory dealing with the *Shastra* (an instance is to follow presently).[3] Yet what makes us pause to reflect is the cor-

[1] J. Duncan M. Derrett, "Indian Traditions and the Rule of Law Among Nations," in: *International and Comparative Law Quarterly 11* (1962), 266-272, at 270, critically commenting upon a seminar held in Delhi and on its results based on "scraps of classical material of diverse kinds and the debatable activities of Gandhiji", yet submitting at the same time that "a traditional exponent of the dharmaśāstra, or a disciple of Gandhiji, if patiently questioned, might have produced something more lively..."

[2] Wendy Doniger O'Flaherty, J. Duncan M. Derrett (eds.), *The concept of Duty in South Asia*, Delhi, 1978, preface at p. vii/viii.

[3] For a recent sympathetic discussion of this aspect see Arun Shourie, *Hinduism: Essence and Consequence*, N.Delhi, 1979, 374ff.

responding difficulty on the opposite side. Viewing him against Western traditions which we like to call "modern" - can he confidently be claimed as part of the current of Western modernity, even of the *Lebensreform* variety? Do we not again and again come up against incongruities which make us wonder whether he is still best understood as essentially a Hindu, predisposed by his own culture's conservative legacy?

Questions of this type have been asked more than once and have been answered in opposite directions, with varying degrees of sophistication, at times with some partisan heat. Truly remarkable in this is not so much the obvious embarrassment in answering either one of these questions with an unqualified "yes", but the persistent inclination to fall back on the same time-honoured dichotomy, i.e. to force a choice and clearly list Gandhi with one of the two alternative derivations. Could it not be that the underlying assumption - if a Hindu: a traditionalist; and if a modernist: a Westerner - really is a refusal to admit anything legitimately novel as truly Indian; an unwillingness to expect any living sparks from the ashes of classical Hindu tradition, even when blown into by Western winds?

Yet it is precisely this possibility of encountering the unexpected which should inform our attitude in dealing with an alien culture. What seems to be truly unexpected, however, - and this testifies to our conceit - frequently is the viable intellectual alternative rather than the more sensational oddity, the alternative appearing sometimes but as a sudden change of emphasis within a supposedly known aggregate. We owe much to Professor Derrett's writings for this perspective of India's normative traditions: as an "alternative intellectual system",[4] i.e. an alternative approach to basically common human problems rather than a collection of classical artefacts; and if, in his memorable words, "the old India ... is not going to melt ... in the warm stream of the world's currents, but is going, posi-

[4] Derrett, *A Critique of Modern Hindu Law*, Bombay, 1970, 12.

tively and even relentlessly to contribute in its turn something to the world's knowledge of how people should live and let live...",[5] we may have to be ready for even more. Our encounter is not merely with a past classical culture, with "ashes", but with a living India. We may then get novel answers embodying not only past alternatives but alternatives heretofore latent in the other culture itself. In every cultural system there may be unused variables, inchoate but unexplored lines of development, potentials under-emphasized which in a changed constellation may unexpectedly come to the foreground. They may look new, even revolutionary to the foreign observer, yet not necessarily unwarranted or extraneous to somebody brought up in the full complexity of indigenous tradition. A Hindu, in other words, might be able to produce a response which an indologist would almost methodically be precluded from admitting, or would have to censure as "misunderstanding".

The question of adequacy, needless to say, remains. There are the temptations of modern fashion or eyewash, and we are not relieved from the task of assessing the validity of a solution. In doing so, however, we should be guided less by our preconceptions of historically proved admissibility, but by the test of essential compatibility, - legitimacy, as it were, of living offspring. It is in such a general perspective that a discussion of Gandhi, as a great explorer of *legitimate alternatives* to well-trodden paths of Indian or occidental rationalization, could be usefully undertaken.

II.

Having said all this nevertheless we now proceed to consider Gandhi from the side where for once he decidedly seems to wear the badge of Western progressivism and value preferences. Gandhi must be owned to have been one of the great egalitarians of our age. To substantiate this claim it is perhaps sufficient at this stage to point to his determined stand on the two key issues of contemporary egalitarian movement: the cause of the

[5] Ibid. 13.

socially depressed classes and the emancipation of women. We may also note that even his central theme, nonviolence, is connected by him with egalitarian considerations:

> "My notion of democracy is that under it the weakest should have the same opportunity as the strongest. That can never happen except through non-violence."[6]

The egalitarian drift in Gandhi's development can perhaps best be illustrated with an instance from a relatively early phase of his life career: his egalitarian misinterpretation of Ruskin. The famous incident when on a train ride in 1904 he first read and absorbed Ruskin's "Unto This Last" in an experience of almost religious awakening[7] from hindsight has a curious tinge of the unreal by its admixture of misunderstanding. Whatever Gandhi legitimately concluded from the book, his later interpretations have certainly given an egalitarian twist to it which is absent from the original and even positively contradicted by its language.[8] Thus one of the three main "teachings" which Gandhi extracted, namely: the principle of an equal living wage for all professional work whether manual or intellectual is not supported by Ruskin's text and is probably a misreading of his advocacy of fixed standard wages for each calling respectively.[9] In the paraphrasing epitome of "Unto This Last"

[6] *Harijan* 18.5.1940, p. 129.

[7] *Autobiography*, Part IV ch. 18 ("The Magic Spell of a Book").

[8] Elisabeth T. McLaughlin, *Ruskin and Gandhi*, London, 1974, pp. 17, 22/3 et passim notes the discrepancies but refuses to bring out their fundamental significance, preferring instead to gloss over and harmonize the difference by assertions of "Gandhi's remarkable intuitive faculty for leaping to the heart of an author's meaning"etc. Z. Hasan, *Gandhi and Ruskin*, Delhi, 1980, comes out with the astonishing statement that "Ruskin and Gandhi both believed in the essential inequality of man" (p. 120).

[9] The misunderstanding is possibly provoked by phrases like "equality of wages", part I § 15, but see Ruskin's own note to Part III § 52

which Gandhi in 1908 serially published under the title 'Sarvodaya' in his South-African weekly *Indian Opinion* we find changed renderings like the following:

> *Ruskin:*[10] "'The rich and the poor have met. God is their maker.' 'The rich and the poor have met. God is their light.' (Prov. xxii,2; xxix, 13) ... That is to say, as long as the world lasts, the action and counter-action of wealth and poverty, the meeting, face to face, of rich and poor, is just as appointed and necessary a law of that world as the flow of stream to sea, or the interchange of power among the electric clouds" etc.
>
> *Gandhi:*[11] "Solomon says further: 'The rich and the poor are equal. God is their maker, God gives them knowledge.' The rich and the poor cannot live, the one without the other. But evil consequences follow when the two forget that they are equal, and that God is their light."

That such an interpretation is not in consonance with Ruskin's intentions is made abundantly clear in a passage occurring only a little later in the original: Ruskin's solemn disclaimer against the imputation of being a socialist:

> "... if there be any point insisted on throughout my works more frequently than another, that one point is the *impossibility of Equality*. My continual aim has been to show the eternal *superiority* of some men to others... and to show also the advisability of appointing such persons ... to guide, to lead or on occasion even to

[9] (cont.)
expressly denying such conclusions. I quote 'Unto This Last' from: *The Works of John Ruskin*, ed. E.T. Cook and A. Wedderburn, Vol. 17, London, 1905.

[10] III § 44 (p. 58 f., loc. cit.).

[11] *Collected Works* vol. 8, 325.

> compel and subdue, their *inferior* according to their own better knowledge and wiser will."[12]

Gandhi, hardly accidentally, has left out the entire protestation. While this is an extreme, and rare, case of pointed incompatibility, there are many instances of more subtle transformation. Thus Ruskin's elitist, vitalistic concepts of value and wealth, viz.[13]

> "To be 'valuable', therefore, is to 'avail towards life'. A truly valuable or availing thing is that which leads to life with its whole strenght..."

and[14]

> "Wealth, therefore, is '*the possession of the valuable by the valiant*'"...

with the consequence of[15]

> "... distribution not absolute but discriminate; not of every thing to every man, but of the right thing to the right man..."

are made by Gandhi into a sort of basic needs program in the interest of *everyman's* ability to lead the good life:[16]

> "Useful articles are those which support human life. Supporting human life means provision of food, clothing etc., so as to enable men to live a *moral* life and to do good while they live."

[12] III § 54 (p. 74). Cf. his pleading for separation of a nation's "servile" from its "lordly" part and assignment of inferior labour to the former (*Munera Pulveris* § 109, loc.cit., p. 234), his defence of slavery (ibid. § 130, p. 254).

[13] IV § 61 (p. 84).

[14] IV § 64 (p. 88), emphasis in the original.

[15] IV § 63 (p. 88).

[16] *Collected Works* vol. 8, 371 (emph. add.).

The comparison need not be carried into further detail here. How far divergences and changes represent a deliberate attempt of modification, how far they are rather subconscious reflections of an instinctive attitude, is not always easy to tell; it is, however, of secondary importance. Either way the alterations made would serve as strong indicators for the direction in which Gandhi's mind was working.

III.

The phenomenon of a Hindu misreading or even deliberately correcting a revered European author in an egalitarian sense should not pass unnoticed. It is true that by 1900 Indian reformers had for some time already begun to take up the cause of human equality, prompted by the confrontation with Western ideas and the onslaught of criticism on the caste system,[17] but also by the experiences of racial humiliation under colonial rule.[18] We may have to consider that Gandhi had to face this double challenge in concentrated form under South African conditions. Nevertheless the question whether adoption of the equality postulate is something more than simply a sign of Westernization, perhaps superficial or tactical, assumes a different complexion in his case. In 1908 Gandhi certainly had entered the stage of confrontation with Western civilization and of conscious movement towards Indian tradition.[19]

[17] Cf. B.N. Ganguli, *Concept of Equality. The Nineteenth Century Debate*, Simla, 1975; D. Dalton, *Indian Idea of Freedom*, Gurgaon, 1982, 77ff.

[18] N.S. Bose, *Racism, Struggle for Equality and Indian Nationalism*, Calcutta, 1981.

[19] The Epitome of "Unto This Last" entitled "Sarvodaya", originally in Gujarati, was begun in jail during imprisonment suffered as consequence of the first satyagraha campaign; the first instalment appeared in *Indian Opinion*, 16.5.1908. The adoption of Indian terms, *satyagraha* and *sarvodaya*, is significant; Socrates can now be described as "a great Satyagrahi". (Indian Opinion, 4.4.1908, *Coll. Works 8*, 173). In the following year *Hind Swaraj* was written.

And here we are not dealing with a political memorandum protesting racial equality, nor with critical writing specifically addressed to Indian social reform, but with a general philosophical disquisition on problems of economic ethics. The occurrence of instinctive egalitarian distortions in such a text marks a deeper strand of thinking. It might well make us pause to reflect on the strange role distribution between Hindu and European in this case. We should expect just the reverse under common assumptions about the fundamental cultural attitudes involved.

India in its "genuine" and traditional aspect to us means the very embodiment of inequality, and of accepted inequality at that, intellectually re-inforced by a predisposition to rank gradation.[20] The caste system, in particular, would seem to be a consistent denial of equality before the law. There is a consensus that equality as an ideal has been not only practically non-existent but positively opposed to most Indian thought, certainly to the Shastra.[21] So axiomatic has this be-

[20] Cf. L. Dumont, *Homo Hierarchicus*, (*infra*. n. 24) sections 94-5; A. Béteille, *Inequality Among Men*, 1977, 38: "... a kind of inevitable tendency among individuals and groups in a society to arrange themselves on a hierarchy of status."

[21] See, e.g., A.L. Basham, *The Wonder That Was India* (1954), 120; A. Béteille, loc.cit. 149 ..."the normative order of this society was based on the premise of inequality"; similarly Derrett, "Dilemma des Rechts," in: W. Fikentscher/H. Franke (eds.), *Entstehung und Wandel rechtlicher Traditionen*, (1980), 523; id., *Religion, Law and the State in India*, (1968), 19; id., "History of Indian Law (Dharma-Śāstra), in: *Handb. d. Orientalistik*, 2. Abt. Bd. 3, (1973), 35; L. Dumont, "Caste, Racism and Stratification", *Contr. Ind. Sociology* 5, (1961), 30: "The Indian system is a coherent social system based on the principle of inequality." M. Weber, *Gesammelte Aufsätze zur Religionssoziologie Bd. II: Hinduismus und Buddhismus*, (1920), 142-3: "Die Menschen waren nicht ... prinzipiell gleich, sondern wurden zu allen Zeiten ungleich geboren, so ungleich wie Menschen und Tiere."

come with us that where for once we find *samatā* (equality) in the administration of justice expressly enjoined by the emperor Ashoka upon his officers we are puzzled, hesitant to attribute "so drastic a change" even to this great man, and would rather be inclined somehow to read down the literal meaning.[22] From the inherent inequality observed in the caste specialization of *dharma* Max Weber was induced to rule out the very possibility of universal ethics or natural law from Indian philosophy.[23] In our days Louis Dumont has pointedly summed up the position by conceptualizing (traditional) Indian society as an anti-model to our egalitarian one: Homo Hierarchicus vs. Homo Aequalis.[24] A motive consideration in this construction of opposed ideal types[25] appears to be the felt necessity of "a general theory of 'Inequality'", a theory to be centered on a society which gives inequality a meaning,

[22] Basham, loc.cit.; Ashoka, 4th Pillar Edict: "This indeed is desirable that there should be uniformity in judicial procedure (*vyavahāra samatā*) as well as uniformity in sentences (*daṇḍa samatā*)." Translation and Sanskrit rendering of terms from: A. Sen, *Ashoka's Edicts*, Calcutta, 1956, p. 153.

[23] M. Weber, loc.cit. (n. 21).

[24] L. Dumont, *Homo Hierarchicus. Essai sur le système des castes*, Paris, 1966; id., *Homo Aequalis. Genèse et épanouissement de l'idéologie économique*, Paris, 1977; English version: *From Mandeville to Marx. The Genesis and Triumph of Economic Ideology*, Chicago and London, 1977, (quotations and references in the following are taken from the English version); see also the symposium on "Homo Hierarchicus" in: *Contributions to Indian Sociology 5*, (1971) and Dumont's contribution "On Putative Hierarchy and Some Allergies to it" (p. 58 ff. ibid.).

[25] M. Weber's term though apparently avoided by Dumont (but see "type pur", Homo Hierarchicus, p. 300) seems the appropriate characterization of the attempt, particularly of its emphasis on the system's own normative conceptions.

i.e. does not disavow but valorizes it as 'Hierarchy'.[26] It will be clear that what we are discussing is not a marginal ideological issue. If the egalitarian tendency observed in Gandhi's paraphrase does mean anything, it cannot be treated as peripheral. The question raised really is whether in a cardinal point of cultural identity Gandhi has moved beyond the pale of traditional Hindu thought - or whether on the contrary he can rely on some basis for equality as a value in his cultural heritage. We shall presently see that Gandhi in fact was alive to this question and was grappling with it throughout his lifetime. The issues involved, however, are likely to remain blurred and equivocal, unless we take a closer look at the somewhat elusive notion of equality itself.

Dumont's introduction of the concept of hierarchy in the place of "inequality" undoubtedly is an advance towards clarification. The underlying problem has not always been sufficiently realised. An undefined, non-descript "inequality" is a negation, but not a value opposition to equality, and can hardly be conceived of as basis of any social system. We may in this context remember Aristotle's statement that "the just is the equal" (as being apparent to everybody even without argument)[27]. By contenting ourselves with the simple negative term "inequality" we would in effect be saying that the organization of traditional India entirely lacked the element of justice - an allegation not be made lightly or inadvertently by implication, whatever one's reservations against the caste system. In search of a principle or a minimum semblance of justice in that system we shall have to look for equality of some kind interwoven, as it were, in its fabric of inequality.

[26] L. Dumont, "Caste, Racism and 'Stratification'", *Contrib. to Indian Sociology 5,* (1961), 20.

[27] Nicomachean Ethics 1131 a (quoted from: Aristotelis Ethica Nicomachea, recognovit J. Bywater, Oxford University Press, 1894 repr. 1959, p. 94, my translation).

"Hierarchy", to be sure, is not introduced by Dumont as a principle of justice let alone equality, but on the contrary, as opposition to equality, as a principle of holistic integration.[28] It nevertheless is "inequality with a meaning", and also a principle of ordering, one might say, it is ordered inequality. The relationship of this to equality and justice is not immediately transparent; obviously the opposition of *ordered* inequality to equality is a qualified one.

In order to understand this, and further to understand why the quest for an equality intertwined with manifest inequality in the caste system is neither illusory nor a mere sophistry, one has to realize the necessary correlation between equality and inequality. Both notions, correctly understood, in fact connote the correlation in stressing one of its sides. Equality inevitably implies inequality, since equality is not identity:[29] all mysteries of the notion are rooted in this distinction. To say that two things are equal means that being not identical they are partly unequal, too. While they share some common, or identical elements, they differ in others. "Equality" in relation to the aggregates thus expresses an overall evaluation in which the identical elements are judged the essential or determinant ones.

The reciprocal relation would be similarly evident but for the linguistic peculiarity that the term inequality is used to denote absolute as well as relative inequality. Absolute inequality, or incommensurability, i.e. the case that

[28] Loc.cit. (n. 26), p. 35 ... "in India, any totality is expressed in the form of a hierarchical enumeration of its components, ... hierarchy marks the conceptual integration of a whole."

[29] A point again, and rightly, emphasised by Dumont; cf. *Homo Hierarchicus*, p. 31: "La confusion entre égalité et identité s'est installée au niveau du sens commun;" id., "Caste, Racism, and 'Stratification'", (loc. cit. n. 26), p. 41: "It would be better to prevent the passage from the *moral principle of equality* to the notion that all men are identical." (emph. add.).

two aggregates compared comprise no common or identical elements whatsoever, is the exact opposite of identity. It should similarly be excluded here: the real point of interest in the equality/inequality predication - which is to establish and evaluate partial identity among two entities remaining otherwise distinct - is lacking in both limiting cases, whether there be a collapse into unity (identity) or a complete falling apart (incommensurability). It may be observed in passing that the stated ambivalence of the word inequality in itself should caution us against its unqualified use as designation of a social principle.

The relative inequality then, which alone is relevant here, implies equality as its reverse side just as equality implies inequality. This necessary correlation would explain why Dumont in the course of his comparing the two ideal types of equality or inequality valorization respectively, is led to speak of "two leaves of the same diptych."[30] But the point has to be stressed that even where value emphasis is on "inequality", some concomitant equality is presupposed, if there be coherence at all. There could not be any measure or gradation of inequality otherwise, no way of "thinking the difference",[31] there would simply be chaos. We may go one step further and conclude that "equality" could in no case be altogether insignificant. This is so, because against the natural divergence and "inequality" of elements "equality" is the cohesive principle in social organization, the element of rationality and order.

[30] Loc.cit. n. 26, p. 37-38.

[31] "Penser la différence" - Dumont in the French version of "Caste, Racism and 'Stratification'", (*supra* n. 26), *Homo Hierarchicus*, p. 322, explaining the need to provide analytical tools for recognizing and conceptualizing differences. "Thinking the difference" is perhaps a clumsier translation than "conceptualizing differences" (Contributions, loc.cit., p. 41), but it expresses the nuance essential here: a common measure. Pointedly said, one might conceptualize the unthinkable.

The issue between egalitarian and hierarchical society then is not the issue between equality and inequality in a general or absolute sense, but is in truth, as it is always, the question where the lines of equality are to be drawn. The relevant consideration in this case is the fundamental position of the human individual and the issue specifically is equality or inequality of *personal status*. That indeed lines of equality are involved even in a system based on inequality of personal status may be explained by recourse to a famous distinction of classical philosophy, expounded notably by Aristotle: the distinction of numerical and proportional equality.[32] Numerical Equality is the justice of exchange (*iustitia commutativa*), where the personal status of the actors is either equal or considered immaterial, and attention is focussed exclusively on the equality of the values exchanged. Proportional or with the Greek term: "analogous" Equality reigning in the realm of social justice (*iustitia distributiva*) takes into account the conditions of persons involved. If inequality of personal conditions or, for that matter, status is accepted, equality can still be established as equality of proportion between the position of (at least) two persons and their respective due: to each according to (= in proportion to) his status, ability, performance, needs &c.

The criticism is often made that historically this distinction was nothing but a dialectical stratagem directed against the egalitarian democratic movement in Plato's days.[33] The inference is that its function has been inherently conservative. Against this it should be pointed out in the first instance that

[32] Aristotle loc.cit., *supra* n. 27. The first exposition of the distinction is found in Plato, *Nomoi* 757 a whom Aristotle seems to follow, e.g., in the maxim "equal things are unequal to unequals" and the remark that this issue is the origin of so much civic strife etc.

[33] A. Podlech, *Gehalt und Funktionen des allgemeinen verfassungsrechtlichen Gleichheitssatzes*, Berlin, 1971, 53 ff. and further references given there.

proportional equality has been invoked at least as frequently by "progressive" critics of formal equality, notably by Marx and other socialists.[34] Anatole France's sarcasm about the majestic equality of the laws prohibiting rich and poor alike from sleeping under the bridges and from stealing bread, is polemics of that kind. And the communist maxim "From each according to his ability, to each according to his needs" is a maxim of proportional equality. On the conceptual plane the distinction or perhaps dialectics between numerical and pro - portional equality is inescapable; it becomes increasingly practical with developing division of labour and "organic solidarity."[35] Against a semblance of reduction to tautology the concept of equality even in its plasticity retains an important pragmatical function: it clarifies that justice is on the side of equality and it puts the burden of argument, justification or proof on the side pleading "inequality" as relevant.[36] This, incidentally, is the first and basic mea-

[34] See, in particular, *Kritik des Gothaer Programms, Marx/Engels Werke,* Berlin, 1962, Bd. 19, 10 ff; e.g. at 20 f.: "Every law consists in application of *equal* standards to *unequal* individuals...; the "equal law", therefore, is a violation of equality, and an injustice." (emph. original; my translation). For a modern restatement of Marx' criticism see Isaac D. Balbus, "Commodity Form and Legal Form: An Essay on the 'Relative Autonomy' of the Law," *Law and Society Rev. 11,* (1976-77), 571 ff.

In interesting, but not surprising homology with Marx, F. Nietzsche, in: *Also sprach Zarathustra,* meaning to be very provocative, exclaims: "For men are *not* equal: thus speaks Justice" (Part II, About the Scholars, towards the end).

[35] E. Durkheim, *De la division du travail social,* 1893; N. Luhmann, *Rechtssoziologie I,* 188f.; see also Aristotle, loc.cit. (n. 27) 1133 a.

[36] A. Podlech, loc.cit. (n. 33), p. 85ff. Podlech's general criticism of Plato's and Aristotle's double concept of equality is connected with presuppositions and functions of present constitutional law (i.e. equality of individuals, legislative discretion in determining just law) and is therefore inconclusive on a theoretical plane.

ning of the biblical "Unto This Last;" it is, at any rate, the argumentative situation underlying the parable.[37]

It would thus seem appropriate to say that a hierarchical social system is a system not of inequality but of proportional equality. Where is the equality to be found? In the first place, and this is already noted by Dumont,[38] in such a system not every person is considered unequal to every other person, but people are classed into status groups and are treated as equals within their status group. The hierarchical inequality is not all-pervading, but serves as a standard determining the proportion of equality among the various status groups respectively. Every Brahmin etc. is to be treated according to his caste status, i.e. exactly equally with any other Brahmin, irrespective of person. This alone would sufficiently explain the *samatā* enjoined in Ashoka's pillar edict as true equality. We find the principle neatly expressed also in a more modern text: in the preamble of the *Muluki Ain*, the Nepal Code enacted in 1854, it is announced that

> "henceforth lower and higher-ranking subjects shall be punished uniformly according to their guilt and caste."[39]

The very concept of equality of status has most likely made its appearance everywhere as the limited equality with-

[37] Matthew 20, 1-15, particularly 13 - a complicated situation between *iustitia commutativa* (contract justice) and *iustitia distributiva*.

[38] Dumont, *Homo Aequalis*, (*supra* n. 24), p. 5, following Talcott Parsons, "A Revised Analytical Approach to the Theory of Social Stratification," in: *Essays in Sociological Theory*, rev. ed., New York, 1954, 386 ff. at 387 n. 1.

[39] Quoted from: A. Höfer, *The Caste Hierarchy and the State in Nepal. A Study of the Muluki Ain of 1854*, Innsbruck, 1979, 195. The change introduced is regional uniformity.

in a particular status group in contradistinction to others.[40] This at least is the original meaning of the famous c. 39 of the Magna Charta guaranteeing "judgment by his peers" to every accused freeman.

The impression that such equality of "peers" is a limited one really reflects but our disinclination to acknowledge the criteria for status differentiation as relevant. Even so the role of equality within hierarchical society is not exhausted herewith. There is another sense in which equality has to be taken into consideration, a sense in no way to be rated as limited or secondary, but rather as "encompassing" - fundamental howsoever latent. This is equality in its function of basic homogeneity, giving a measure to difference; it is the postulate of intelligible cohesion or, to use the old *topoi* for ordered society, of composing divergence into *harmony*, into rational *consonance (discordia concors)*.[41] What this means within the Indian framework will appear more clearly from the analysis of Gandhi's interpretation. At this stage a metaphysical Indian projection of equality should be mentioned at least in passing, because it reflects the need to connect the steps of the hierarchical ladder. An "egalitarian" justification for the differences of caste status is implicit in the twin doctrine of karma and samsara which assigns an equal moral opportunity to each life monad through the cycle of rebirths. If the metaphysical assumptions are accepted, the

[40] See generally, A. Bêteille, op.cit. (n.20), 44 f.

[41] The primary emphasis of these formulas being on difference the equality presupposed is often latent but implied by the use of *oxymora* as e.g. in Boethius: "Est enim harmonia *plurimorum adunatio*, et *dissentientium consensio*" (emph. add.); but it may come to the foreground, cf. Leibniz: "Harmonia est diversitas identitate compensata." - I owe these quotations to the contribution by W. Kaegi to the congratulatory volume for E. Bonjour, *Discordia Concors*, 1968, I p. 148.

"egalitarianism" of the conception is perfect.[42] It stands in strange contrast with the equally perfect elitism represented by the protestant doctrines of divine predetermination to redemption or eternal damnation. Yet the latter are the conceptions underlying, or at least concomitant with, the modern occidental egalitarian movement.

IV.

Returning, however, to a less transcendental level and confining our comparison to the situation of the empirical individual within society we may perceive the egalitarian disposition, in the light of what has been explained, as a special case of proportional equality.[43] The personal conditions of all members of society are taken into account from a supposed higher, normative angle, but are judged as fundamentally equal for each individual. The equal proportion of distribution is thus reduced to simple numerical equality. The key question is: on what account, or in what respect, are all differences of individuality or position considered inessential as against the fundamental identity of the *conditio humana*? What consequently, are the elements making up the status of equality? Conversely, what elements may be left to differentiation and proportional justice proper, without affecting fundamental equality?

[42] "Egalitarian" is put in brackets, because the human individual here is perceived but as a phase, not as the unit of equality: "a chain of existences is the equivalent of a single, individual existence in the West." (L. Dumont, *Contr. to Ind. Sociology 8*, 1965, 91). - It is a significant parallel that in the Occident also the radical exposition of hierarchical justice in Plato's *Politeia* concludes with a vision of compensatory justice through transmigration - the characteristic modification being that in Plato's myth justification relates to each individual incarnation by a mixture of lot drawing and free choice.

[43] Cf. Talcott Parsons, loc.cit. (*supra* n. 38) at 388.

Evidently the shape and content, the face as it were, of egalitarianism will vary with the *ratio* for identifying essential humanity within the multiplicity of individuals. The question to ask concerning Gandhi's egalitarian creed, as with all others, will have to be what he considered the *right*, or *true*, equality among human beings. From the history of egalitarian ideas[44] a distinction between two main lines of approach may be preliminarily noted as helpful for our inquiry.

(a) Equality may be derived from positive natural similarity, especially from the biological unity of the human species.[45] This, to be sure, would exclude certain crude equations of men with beasts such as occur in the Shastras with reference to low castes.[46] Generally though, one is on unsafe ground with deduction from factual likeness. The outward unity of the species is inconclusive vis-à-vis internal divisions social or biological. The cardinal element distinguishing man from other living species, namely the power of free rational action, is not identifiable as a present factual

[44] This history cannot be traced here even cursorily. General reference may be made to Sanford A. Lakoff, *Equality in Political Philosophy*, 1964; Art. "Gleichheit" in: O. Brunner, W. Conze, R. Kosellek (eds.), *Geschichtliche Grundbegriffe*, Vol. II, 1975, 997 ff.

[45] This seems to have been the position of some Greek sophists, arguing from "Nature" against social divisions and the limited equality of active citizenship. - In a different context it is the starting point for J.-J. Rousseau, *Discours sur l'origine de l'inégalité parmi les hommes*, 1755. - Dumont, following G. Myrdal, notes a universal tendency, "generally everywhere and especially in America" to base "the essentially moral doctrine of 'natural rights' ... on a biological equalitarianism: all men are 'created equal'" (loc.cit. n. 26 at p. 40). This may find a basis also in some misleading passages in Locke, cf. *infra* n. 49.

[46] E.g., *Manusmṛti XI*, 132; *XII*, 55; *Baudhāyana Dharmaśāstra I*, 10, 19, 6.

quantity. In terms of "objective" observation it remains a purely negative factor, indeterminate and unreliable. This enigmatic faculty may therefore lend itself to boundless real or imaginary differentiations among men. At all times it has proved to be an open flank to attacks on equality from the side of biological creeds.

(b) Deduction of equality has been sought, on the contrary, by reasoning from negative findings: from man's exposed, uncertain condition and the very unpredictability of his (re)actions, from common deficiencies interpreted as *needs* of man. This represents a step from an unsafe naturalism towards a normative conception. Thus Hobbes had viewed human equality as equal dangerousness, in that even the weakest is able to kill the strongest.[47] Locke perceived the lack of certainty in less provocative, if ambivalent terms: as insecurity resulting from freedom. Freedom here, *inter alia*, represents the offspring of a metaphysical tradition: the protestant postulate of man's direct subordination to God (in conscience), and conversely the secondary, derivative nature of ecclesiastical, and later all secular authority. This could develop into a concept of general human equality, once the ties to *revealed* religion with its radical, and often sanguinary, elitism had been severed and natural law had been substituted as the veiled and egalitarian form of God's rule in this world.[48] Man's natural equality in Locke's terms consists in the *absence of any natural subordination* under human power (*dominium, patria potestas*) concomitant with direct subjection under (God's) natural law. From the natural deficiency in relation to order and security a *common need* for constructing a limited power is derived,

[47] Th. Hobbes, *Leviathan*, 1651, Part I, ch. 13.

[48] For Locke, see e.g. his *Two Treatises on Civil Government*, 1690, I § 86; II § 6; the conception goes back to Luther's doctrine of God's two Kingdoms which is clearly present in Hobbes' *Leviathan*, Part II ch. 31."Of the Kingdome of God by Nature."

with the ensuing notions of political equality and equal obligation under positive laws.[49]

The negative part of this conception - equality understood as absence of primary subordination among men - plays a key role throughout L. Dumont's analysis of modern egalitarianism in *Homo Aequalis*.[50] It marks the emergence of *individualism*, i.e. the valuation entailing egalitarianism and taking the place of the older holistic view of society which is represented by the Indian hierarchical order. *Holism* is explained as a view valuing, in the first place, order (entailing hierarchy as subordination among men), i.e. "the conformity of every element to its role in society - in a word, the society as a whole."[51] Holism "centering on subordination" is further described as according a higher value emphasis to relations bet-

[49] The interpretation of Locke is not easy due to his cautious, at times equivocal and tactical manner of putting his argument; it may often mislead a superficial reader. On this aspect see L. Strauss, *Natural Right and History*, 1953, Ch. V B. Thus the dangers of the state of nature, and the dangerousness of man's nature, are but casually mentioned in the beginning, because Locke wants to emphasize the equal dangerousness of the ruler, against Hobbes (II. Treatise § 13). The position becomes clear only if one adds the later descriptions, e.g. in §§ 123 and 128. Only then will the true import of the initial statement of natural equality (§ 4) be understood. Equality of the species is mentioned there, but this is not the point; surprisingly in the same breath equality of rank is also mentioned, (i.e. lack of subordination) and finally equality of *faculties* (i.e. independent power to appropriate things and execute the law of nature according to one's own judgment). The implicit antagonism unfolds itself in the subsequent paragraphs.

[50] Cf. n. 24 *supra*. Dumont consistently uses the word "equalitarian(ism)"; I would prefer "egalitarian(ism)" because of the distinction, emphasized here, between egalitarianism and the principle of equality in its larger sense.

[51] Ibid., p. 4.

ween men than to relations between men and things.[52] Individualism on the contrary, by confining subordination to (property) relations between men and things tends to give primacy to these relations, turning the back on the social whole and on relations between men.[53] Hence its designation as *Economic Ideology* in the subtitle of the book. The culmination of this development is seen in Marx by whom the individual in its aspect of life activity is conceptualized under the title of *production*, i.e. the typical relation of man to things.[54]

In the light of this interpretation we may begin more clearly to perceive the dilemma or, at any rate, the tension in which Gandhi had to find his way. We see him placed in the middle, as it were, between the confrontation of two societal archetypes, his value commitments pointing in both directions. If he had a basic egalitarian inclination, as he tells us in his *Autobiography*,[55] and if, on the other hand, egalitarianism means what Dumont makes it out to be, he had to face an almost intolerable contradiction within his personality: for the one thing which he stood against was the economic and technological mania of Western civilization and the hedonistic, violent individualism perceived by him as its motive energy. One should bear in mind that the conclusions arrived at by Dumont come dangerously close to a certain staple criticism of Western civilization prevalent in Gandhi's time and popular, for obvious reasons, in the East: the caricature of an egoistical and materialistic West devoid of "spirituality" and social solidarity.[56] It is, there-

[52] Pp. 49, 4 *et passim*.

[53] P. 106 (with reference to A. Smith).

[54] See the second part of the book, inscribed "The Accomplishment: Karl Marx"; p. 156: "This unprecedented extension in the usage of *production* represents the apotheosis of the relation of men to things."

[55] Part 4, 10 (*Coll. Works* 39, 221).

[56] Cf. generally St. Hay, *Asian Ideas of East and West*, 1970.

fore, not out of the way to analyse Gandhi's intellectual situation with reference to Dumont's portrait of *Homo Aequalis*. Gandhi's problem concerning true equality may well be put thus: is egalitarianism possible apart from Economic Ideology? The problem is highlighted by his interpretation of Ruskin. What made him respond so enthusiastically to Ruskin's critique primarily was its thrust against the emancipation of the economic category from moral, social and political constraints. This is precisely what Dumont depicts as the core of the egalitarian movement, the "modern revolution",[57] yet Gandhi adorns the critique of that movement with egalitarian postulates. Is he simply naive, unaware of the implications or, to put it more politely, a "typically Indian" syncretistic mind?

Before turning to his answers it may be permitted on the threshold, as it were, to voice a few doubts concerning the stringency of Dumont's generalizations. This, of course, does not pretend to do full justice to his careful, penetrating and well-documented analysis. But it may serve to show that the problem posed for Gandhi was more open-ended, and permitted of more solutions than the binary opposition of individualism and holism would lead us to expect.

Dumont shows, very convincingly to my mind, the fundamental individualistic disposition in Marx' thinking; he also gives a fascinating demonstration of the continuity in the development leading to Marx.[58] Nevertheless there may be doubts whether interpreting the whole ideological movement from that end seen as "accomplishment"[59] can do full justice to previous stages, notably to Locke. A development may be a process of growth and maturing; it may also be a radicalization leading to a loss of complexity. With Marx radical individualism seems to have cut its ties

[57] Loc.cit. p. 7.

[58] Cf. particularly pp. 80, 106, loc.cit.

[59] See n. 54 *supra*; "triumph" in the English title of the book; "épanouissement" in the French version.

with egalitarianism. Equality is rarely mentioned in the latter half of Dumont's book as far as dealing with Marx. This is not accidentally so: Marx suspects the notion of equality and occasionally polemizes against it as a concept of bourgeois justice;[60] more often he avoids it,[61] and he does so in a remarkable manner even when referring to the communist ideal society. Engels, being more explicit, envisages throwing it into the "lumber-room of historical memory".[62] Contrary to common assumptions original Marxism, if the culmination of economic ideology, is not an egalitarian ideology.[63] The reason is that Marx' idea of human emancipation (truly aiming at the absence of subordination in every sense)[64] rejects the normative element in the concept of equality. Egalitarianism, as I hope to have shown, is a concept of justice presupposing a normative, perhaps one might say a hierarchical point of view. Such a perspective transcending the plane of the individual (even in

[60] See mainly *Kritik des Gothaer Programmes*, *supra*. n. 34; *Zur Judenfrage*, *Marx/Engels Werke*, 1956 ff., 1, 347 ff.

[61] In one place when commenting upon a key passage quoted from *Grundrisse der Kritik der politischen Ökonomie* (on p. 178/179 loc.cit.) Dumont is lead to insert the word "equal" where it is conspicuously absent in the original (cf. the German text, Berlin 1953 on p. 75).

[62] Materialien zum "Anti-Dühring", *MEW* 20, 1962, 581; see the systematic refutation of equality as justice in the main part of "Anti-Dühring", ibid. 95-100.

[63] There is, of course, at least a moral implication of *numerical* equality (commutative justice) underlying the doctrine of surplus value. But this belongs into the sphere of commodity circulation and alienated labour. For the final stage Engels ridicules the idea of somebody demanding his "just" share (loc.cit. p. 581).

[64] Dumont, loc.cit., p. 178: "The essential drive is probably toward the end of all subordination and transcendence - in brief, of all bondage."

its identification with society) Marx would probably consider a form of self-alienation.[65]

It is precisely this normative element which is present in Locke's system as man's equal subordination to God, to the Law of Nature, Reason and Morality.[66] It ought not to be discounted, from the special perspective of Marx, as being, so to speak, on the way out. Yet this is what Dumont does, suggesting, expressly and by implication, that the phenomena of morality and deliberate rational action are of a secondary ontological status,[67] apt to disappear in the further development. This is plausible only if Marx' scheme of basis and superstructure is anticipated as true end of the process.[68]

[65] An interesting commentary, if *ex post*, is the polemics against "so called justice" as being essentially an idea of patriarchal distribution ("von oben herab") by E. Bloch, *Naturrecht und menschliche Würde*, 1961, Ch. 20 (interpreting Marx).

[66] I am aware of the difficulties surrounding the interpretation of these notions in Locke's writings; cf. L. Strauss (*supra* n. 49); P. Laslett in the "Introduction" to his edition of the *Two Treatises of Government*, 1960, 79 ff.; Dumont, loc.cit., p. 55 ff. But in any case reason is conceived of as a normative element of individuality connecting the individual with mankind and not as reducible to a phenomenon of self-alienation.

[67] Morality, uniting the abstract individuals, is a *substitute* for "the concrete bonds of society" (p. 59); *politics* is reduced "to an ontologically marginal adjunct (scil. to property and economics) to be constructed by men according to their lights" (p. 49); political power, consequently, Locke's *Magistrate*, is a synthetically produced "makeshift, an *ersatz*" - Dumont uses the German word evoking unpleasant associations of war time economy - for the "recognition of subordination as a basic principle." (p. 50).

[68] See p. 60 and 59: ... transition from "a holistic social order to a political system raised by consent as a superstructure on an ontologically given economic basis."

As from Locke's position, the question would have to be: Why should the discovery of a generic distinction between relations of men to things on the one hand, and relations between men on the other, destroy *order*, instead of merely transforming it? Why should order not exist in the form of moral authority, through the medium of rational recognition?[69] The ambiguity in Dumont's argument lies in the concept of *order* which is silent about both the origin of order (is there an "ontologically given" order, or from whose perception does it arise?) and its mode of effectuation. The distinction of relations between man and nature and relations between men is rooted in the recognition of *communication* as a special mode of action, and in the ensuing reflection on the proper role of coercive action between men. With this distinction - which is implicit in the rights of conscience and, therefore, the origine of a tradition of equal human rights independent of property ideas[70] - the normative universe divides in two parts: legality and morality, to use the later terminology of Kant.[71] The order of society as a whole cannot be comprehended but by taking together legality and morality including the hierar-

[69] The recognition of the hierarchical principle by Talcott Parsons specifically noted in Dumont's *Homo Hierarchicus* (see *supra* n. 38) occurs precisely in such a context: orientation of action preferences.

[70] See G. Jellinek, *Die Erklärung der Menschen- und Bürgerrechte*, 4. ed., 1927. The generic distinction between the two modes of action, namely God's direct rule by his word, and his indirect rule by secular force, has its first marked appearance in Luther's treatise on secular authority (*Von Weltlicher Obrigkeit, wie weit man ihr Gehorsam schuldig sei*, 1523).

[71] Kant, a representative of the more complex tradition of egalitarian individualism, is mentioned by Dumont only in a short passage, as reinstating morality "by cutting it off definitely from the realm of facts." (p. 80). This I think is a misunderstanding caused perhaps by Neo-Kantian interpretations.

chical relationship between the two.[72] Dumont has a tendency to focus on the hard coin of coercive, "given" order and to neglect moral subordination; he is thus in a danger of illuminating but "one leaf of the diptych". It is to be admitted, though, that there has always been a steady flow of vulgarization from both propagandists and critics of the system, obscuring the complex relationship between the two normative spheres.[73]

In its own right Locke's political philosophy would be better described as a stage in the discovery of *communicative action*,[74] i.e. action involving equal human partnership. The equality implied is no negation of hierarchy but rather a presupposition for the process of establishing and legitimizing hierarchical order. This may take us to Gandhi who devoted his life effort to practical experimentation with communicative action of an expanded type.

V.

We should not attempt to present Gandhi's ideas on equality in a synchronical, systematized manner - though this is often done in books dealing with his philosophy generally. The biographical dimension is indispensable in this case. Gandhi's egalitarian creed took shape in successive stages over his life time, and while we shall find his characteristic basic consistency underlying the process, the line is not always straight on the surface. It is the bends and turns which should attract our interest.

[72] Morality is, in Dumont's sense, the encompassing principle. - For purposes of the present discussion I leave out the problem of cultural values as a further normative dimension.

[73] On this level it may be true that "'rational' society ... is unaware of itself as a hierarchized whole," Dumont loc.cit. *supra* n. 26 at 37.

[74] I use the term as introduced by J. Habermas, in: J. Habermas, N. Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie*, 1971, 251 f. Cf. now J. Habermas, *Theorie des kommunikativen Handelns*, 1981.

The problem is posed in the formative years spent in South Africa. We have already noted Gandhi's later recollection of an innate, natural propensity towards human equality.[75] There is no reason to question this statement on the psychological plane. Nevertheless, observing his early activities when he took up the cause of South African Indians, we find him arguing on quite different lines. The protest against discriminatory laws and practices, as it was expressed in newspaper articles, petitions and court briefs, proceeded not on the claims of inherent human dignity but on the dignity of the civilized Indian and his status as a British subject.[76] This was, obviously, the first line of practical argument offering itself in the situation, particularly for an English trained, Indian lawyer. It permitted recourse to accepted legal notions and to the special promises of equal treatment held out to Indians in

[75] *Autobiography* 4, 10, *Coll. Works* (henceforth: *CW*) 39, 221: "A variety of incidents in my life have conspired to bring me in close contact with people of many creeds and many communities, and my experience with all of them warrants the statement that I have known no distinction between relatives and strangers, countrymen and foreigners, white and coloured, Hindus and Indians of other faiths, whether Musulmans, Parsis, Christians or Jews. I may say that my heart has been incapable of making any such distinctions. I cannot claim this as a special virtue, as it is in my very nature, rather than a result of any effort on my part ..."

[76] E.g., "Letter to the Editor, Natal Advisor" 23.9.1893, *CW* 1, 73 ff., 76; "Deputation to the Natal Governor," 3.7.1894, ibid. 102; "The Indian Franchise," 16.12.1895, ibid. 256 ff., 280; "The Grievances of the British Indians in South India" ("Green Pamphlet"), 1896, *CW* 2, 1 ff. - To the following, cf. generally: R.A. Huttenback, *Gandhi in South Africa. British Imperialism and the Indian Question 1860-1914*, 1971; Pyarelal, *Mahatma Gandhi. The Early Phase*, Vol. I, 1965; id., *Mahatma Gandhi*, Vol. II *The Discovery of Satyagraha - On the Threshold*, 1980.

Queen Victoria's Proclamation of 1858;[77] it also permitted appealing to enlightened imperialist convictions - at a time when the expansion of the Empire in Africa was urged forward under Cecil Rhodes' slogan: "Equal rights for every civilized man South of the Sambesi."[78] But the appeal to legal equality of that description and, where that failed, to the privileged position of a civilized nation, had some strange implications in the light of Gandhi's later stance. A distinction between the civilized Indian (i.e. the trader) and the Indian "coolie" (the indentured or ex-indentured labourer) had to be - preliminarily - stressed and exploited.[79] And the demand for equal treatment with the white British subject was, at the same time, a demand for distinction not only from non-British Asian immigrants but even from an important group of fellow subjects: the black natives. The insult felt by the denial of equality with the whites was protested even more bitterly because of the additional insult in being "classed with the Natives of South Africa - Kaffir races."[80]

[77] "The Indian's 'Charter of Liberty'" (*CW* 1, 262); excerpts of the portions on which Gandhi relied, in his article "The Proclamation of 1858," *Indian Opinion* 9.7.1903, *CW* 3, 357 f.

[78] Speech in Cape Town 18.7.1899, commented upon by Gandhi in *Indian Opinion* 11.6.1903, *CW* 3, 336 ("Lord Milner on the Asiatic Question"). Gandhi at that time held imperialist convictions; cf. generally R.A. Huttenback (n. 75) 82; P.H.M. van den Dungen, "Gandhi in 1919: Loyalist or Rebel," in: R. Kumar (ed.), *Essays in Gandhian Politics*, 1971.

[79] Petition to Lord Ripon 17.7.1894, *CW* 1, 116 ff. at 123-125; the "respectable Indian" e.g. *CW* 1, 98 and 2, 104: the requirement of passes for free, ex-indentured Indians "often puts respectable Indians in a very unpleasant position"; see also Petition to Lord Elgin, 13.8.1906, *CW* 5, 394; this figure still appears in *Satyagraha in South Africa*, ch. 5 (*CW* 29, 33); generally for the situation, from hindsight, ibid. ch. 6, loc.cit. p. 36.

[80] "Green Pamphlet" (n. 76) at p. 8; ibid., p. 13, classification

This is the opening position. Clearly it does not reflect any noticeable concern for equality of human beings as such. It is equally clear that Gandhi's later position represented a fundamental change towards humanism in all relevant aspects, and also, that this change had taken place well before Gandhi left Africa. This is evidenced by language used already in the beginning of the *satyagraha* phase, e.g. that "the Indian who submits to this law ceases to be a *human being*."[81] To know when and how the change took place would give us a clue to the nature of Gandhi's egalitarian convictions and more generally, to his kind of humanism. Curiously enough, this crucial question has not been much attended to. The one serious attempt of explanation which I have come across is the thesis advanced by Erik H. Erikson.[82] Erikson's interest is not with egalitarianism as such but with the genesis of satyagraha. But he assumes, in the phase immediately preceding the "Advent of Satyagraha",[83] a decisive breakthrough to a universal human identity, transcending Gandhi's prior existence as a respected well-to-do lawyer and coloured citizen of the Empire. This moment he puts into the episode of the Zulu war 1906 when Gandhi with his voluntary stretcher-bearer corps was specifically engaged in nursing wounded Zulus. An instinctive identification with the suffering blacks maltreated by "white he-men" is assumed by Erikson to have led to the twin

[80] (cont.)
under "natives and Asiatics" in Railway and Post Offices as an insult to Indians; Petition to Lord Ripon (n. 79) at *CW* 1, 122: "Your Lordship's Petitioners have noticed with shame and sorrow the zealous attempt made to compare your Petitioners with the natives of South Africa."

[81] "Why Do We Oppose Law," *Indian Opinion* 30.11.1907, *CW* 7, 399 ff. (emph. add.), a remarkable text for our problem also in other respects.

[82] *Gandhi's Truth. On the Origin of Militant Nonviolence*, 1969 (Pocket Book Edition), 191 ff.

[83] Gandhi's title: see *Satyagraha in South Africa* (*CW* 29)., ch. 12.

vow of *brahmacharya* and *aparigraha* out of a feeling of religious identity with all mortals and abhorrence of male vanity in killing, procreating and householding. In sum, the breakthrough is one of humanity as religiosity " - namely, that striving for ethical clarity in the face of the one fact which gives all humanity a joint identity and yet is denied by each subspecies in its own way. Religiosity is the consciousness of death, the love of all men as equally mortal, and the charitable insight that men hate other men 'mortally' in the hope of gaining a sense of immortality out of the vainglorious-ness of their own pseudo-species."[84]

The hypothesis is impressive, and the historical situation certainly is marked by a singular coincidence of various dramatic developments. Nevertheless, there is little textual support for Erikson's submissions; humanitarian generalizations, e.g., on identifying with the black part of humanity,[85] or on the common human fate of having to face death are surprisingly and conspicuously absent in Gandhi's later accounts, and in his contemporaneous writing.[86] Textual argument may not be conclusive against psychoanalytical construction. But one cannot fail to notice a certain existentialist ring in Erikson's language which may cast a doubt on the universality claimed for his rationalization. For our purposes, however, it is precisely rationalization, i.e. the religious *answer* that counts. In this context it is relevant that consciousness of death and equali-

[84] N. 84: Erikson, p. 194.

[85] Cf. Erikson's speculations on the connotations of the color black, connecting "Black Law", the outbreak of the "Black Plague" in Johannesburg, with the black Zulus, dirty skin and the untouchables (question of purity etc.). In particular I cannot find any text supporting Erikson's contention that "In the period of the Zulu rebellion, Gandhi began to refer to all non-whites, including himself, as black...".

[86] Erikson's analysis is based on a comparison of Gandhi's two accounts given in *Autobiography* and *Satyagraha in South Africa*.

ty in the face of death is not the way in which Gandhi at any time described his religious experience or the *conditio humana*. If we follow the texts we are led into another direction, with emphasis not on the passive human identity of having to suffer death, but on man'a active potential.

From the year preceding the Zulu war episode we have reports of comparative lectures on religion delivered in Johannesburg.[87] There is an emphasis in these lectures not only on equality of all religions but specifically on the egalitarian teachings of Islam (as against Hindu society)[88] and of Hinduism: "Hindu religion teaches us to look upon all with an equal eye without making distinctions between Hindu and Muslim, Brahmin and *Bhangi*."[89] The appearance of the *bhangi*, somewhat incongruous within the list, is the point of interest here;[90] it shows that the characteristic Gandhian approach to religious equality has already matured. But this serves only as a bit of incontestable evidence;[91] undoubtedly the foundations had been laid much earlier.

[87] At the Masonic Temple under the auspices of the Theosophical Society; *CW* 4, 368, 375 and 405; see also "Clarification" ibid. 430. From his London days Gandhi had retained some contacts with the Theosophical Society (see *Autobiography* 1, 20; 4, 5), attracted by its teaching of universal brotherhood (lecture in Johannesburg 1905 as reported in G.K. Tendulkar, *Mahatma* I, 1860, 72).

[88] *CW* 4, 376: "The doctrine of equality could not but appeal to the masses, who were caste-ridden."

[89] *CW* 4, 431 (cf. 408).

[90] Probably his inclusion is a cryptic reference to *Bhagavadgita* V, 18 which Gandhi used (or misused) in this sense later also (cf. *CW* 19, 100 "To the man who looks on all with an equal eye, a Brahmin, a dog and an antyaja - all are the same", from: *Navajivan* 12.12.1920); significantly the dog is left out here. But under the circumstances it is no less significant, showing Gandhi's preoccupation, that the negro is not mentioned.

[91] The otherwise uninspiring texts are mentioned here also for the reason

From his first year in South Africa Gandhi later recalls an egalitarian objection he raised against dogmatic Christianity:[92]

> "If God could have sons, all of us were His sons. If Jesus was like God, or God himself, then all men were like God and could be God himself."

While the second part of this statement may be relatable to Jain metaphysics[93] it is the first, more theistic conception of equal sonship to God which has become consequential. In the allegorical meaning which alone was acceptable to Gandhi, it may be taken as a first indication for the status of a *devotee* of God familiar from *bhakti* tradition and later Gandhi's conception of the religious man (devotion to Truth[94]). It prefigures the later designation for the untouchables, *Harijan*, man or

91 (cont.)
that contemporaneous evidence for Gandhi's religious development is sparse. Valuable material has been destroyed by Gandhi himself, e.g. his correspondence with E. Maitland, founder of the Esoteric Christian Union (Pyarelal, *The Early Phase*, 326). Most biographical accounts in this respect are reconstructions based on recollection and later material.

92 In Pretoria 1893-94, apparently during the missionary onslaught on the Wellington Convention, end of 1893; *Autobiography* 2, 15, *CW* 39, 112 f. It is not farfetched to assume that the discriminatory treatment he had to suffer *en route* to Wellington may have something to do with his egalitarian reaction to Christianity. For details of the episode cf. Pyarelal, *Early Phase*, p. 314 ff.

93 See Gandhi's questions to his Jain mentor Rajchandra (Raychandbhai), *CW* 1, 90 f. and the latter's answers, sent with a letter on 20.10.1894, *CW* 32, 593 ff. The exchange, incidentally, corroborates that the question of Christ's sonship to God was agitating Gandhi's mind at the time. See also St. Hay, "Jain Influences on Gandhi's Early Thoughts," in: Sibnarayan Ray (ed.), *Gandhi, India & the World*, 1970, 14-23.

94 See e.g., *Autobiography*, "Farewell", *CW* 39, 401.

devotee of God;[95] *Harijan* again was not to remain a condescending special name for the underprivileged but was to become the equal status for all Hindus in a final state of purification.[96]

There is, in other words, an initial tendency to perceive the human individual as fundamentally equal in the religious dimension, namely as being of age and in immediate relationship with God, without need of any divine or priestly mediator (this is the germ of the later insistence on temple-entry for Harijans), but also without pre-ordained selection or revelation. All this is certainly abstract and need not have led to much in terms of social or political consequences, as is shown by the very *bhakti* tradition. But Gandhi was in a unique constellation in his cultural outpost. There were at least two identifiable major factors helping to transform the innocuous religious equality into a potentially explosive practical state;

(a) the literary influence of Western cultural criticism, notably Tolstoy. During his stay in Pretoria in the same year 1893 Gandhi read Tolstoy's *The Kingdom of God is Within You*; and whatever the Indian cultural equivalents, he may have found the principle "that all alike are sons of God and therefore brothers and equals" spelt out as the first principle of the

[95] The name was taken from the Gujarati bhakti poet Narasinha Mehta, see Gandhi's explanation in "Young India" 6.8.1931, *CW* 47, 248, and in the first number of *Harijan*, 11.2.1933, *CW* 53, 266. It had also been used by Tulsidas for a devotee, *Harijan*, 4.4.1936, p. 58; for Marathi: *Harijan*, 4.3.1933, *CW* 53, 457.

In later years Gandhi used the translation "children of God" - nearer again to Christian tradition, but also with a slightly pastoral touch which has promptly found favour in the West; cf. Prayer Address, 29.9. 1944, *CW* 78,144; *Harijan*, 14.4.1946, p. 77.

[96] E.g., *CW*, 53, 267.

Gospel directly in this book.[97] For Tolstoy two practical consequences followed directly from this equal brotherly status as duties common to all:

> a duty not to resist evil by using violence against one's brother, and
>
> a duty to end exploitation of another's labour, by an effort to reduce one's life style and to earn one's subsistence by bodily labour (bread labour).

The second prescription is developed in "What to Do?" which Gandhi read in Durban the following year. The immediate effect of both principles on Gandhi's own convictions is known. But it was of some consequence also that Tolstoy presented his appeal in the form of a critique of the glaring ideological inconsistencies within existing society.[98] The effort to remove such inconsistencies, i.e. individual and social reform activity itself,[99] could therefore be integrated into Gandhi's quest for Truth - an ever-expanding idea which came to be equated with Religion, as Truth was equated with God. This

[97] L. Tolstoy, *The Kingdom of God is Within You*, ch. V (I quote from the Oxford Edition in "The World's Classics", 1936, 143). Gandhi in his *Autobiography* 2, 15 (*CW* 39, 144) puts the reading after the Wellington Convention episode, possibly in 1894. Tolstoy's book was first printed only in 1893.

[98] For a list of such inconsistencies see *The Kingdom of God...*, loc.cit., ch. V entitled "The contradiction between our life and our Christian consciousness."

[99] "Reform" is the first thing we hear of Gandhi's ideas from contemporaneous testimony; a newspaper report of his farewell speech to fellow students at Alfred High School, Rajkot, on his departure for England, has this one sentence: "I hope that some of you will follow in my footsteps and after your return from England you will work wholeheartedly for big reforms in India." (4.7.1888, *CW* 1,2).

equation is documented at least in 1905;[100] it is proclaimed with fanfare after the first partial victory in satyagraha in 1908.[101]

The ethical meaning of this truth is apparent from the beginning: it is being true to one's self, and implies veracity in speech, firmness in standing by one's word, righteousness in action. There is an overall emphasis on action most probably strengthened by the association with practical reform work and with bodily labour. Devotion to Truth,[102] or service of God eventually is *realization* of God (*atman*, self)[103] not only in the sense of becoming conscious of, but also of making real, Truth (God). The later formulas will be that "to realize God is to work like God, with single-minded devotion and ceaseless vigilance;[104] and "Every moment of our life should be filled with mental or physical activity, but that activity should be *sattvika*, tending to Truth."[105] The

[100] Reacting to Lord Curzon's statement that "the highest ideal of truth is to a large extent a Western conception" Gandhi published excerpts from classical Indian texts as a refutation (*Indian Opinion* 1.4.1905 "Oriental Ideal of Truth", *CW* 4, 392 ff.), emphasizing the aspect that "According to Hinduism, Truth is the very essence of Brahma" and, "Ishvara himself is Truth."

[101] "Truth is God, or God is nothing but Truth", Indian Opinion 8.2.1908, *CW* 8, 60 f. "Triumph of Truth".

[102] I find the first appearance of this formula, inconspicuous but unmistakable, in a life sketch of George Washington, published in *Indian Opinion* 30.9.1905 (*CW* 5, 84) as part of the endeavours at public education of the Indian community: "The boy on whose mind devotion to truth was thus firmly imprinted, became at fifty-five the first President of America...."

[103] For the equivalence of these notions see e.g. *Autobiography*, Introduction (*CW* 39, 3); *Discourses on the 'Gita'*, *CW* 32, 129 (30.3.1926).

[104] *Discourses on the 'Gita'*, *CW* 32, 202 (12.5.1926 ad Bhagavadgita IV, 15).

[105] Letter from 'Yeravda Mandir' 26.8.1930, *CW* 44, 104.

articulation of this idea was slow to progress but it must have germinated for a long time, and traces in verbalization can be spotted in the early phase. The pragmatical evidence is overwhelming. In 1906 the discovery is dawning, by the advent of satyagraha, that the epiphany of Truth is in social interaction (as an "experiment").[106]

The esoteric meaning of this Truth, paradoxically speaking, is its being at once transcendental and nonetheless contained in the common, trivial, general nature of man; in this sense it is also secular or natural truth, equally accessible to all, if not necessarily the comfortable way. "Son of God" may therefore be taken to mean "called upon by his nature to serve or realize Truth". This is a common condition applying to all human beings equally: to have religion, i.e. a conscious or half-conscious relationship to Truth. It defines humanity and distinguishes man from animals;[107] the later insistence

[106] This is largely the theme in Erikson's interpretation of "Gandhi's Truth" (supra n. 82, at 396 and 412, following Joan Bondurant, *Conquest of Violence*, 1958). Again the tardiness of conceptualization should be emphasized. The formula (quoted without date by Erikson) that "God never appears to you in person, but in action" is of much later origin (Interview with the missionary Mott 1938, *CW* 68, 171). The speech on the first satyagraha pledge in the mass meeting on Sept. 11, 1906 as quoted by Erikson p. 199 f. is taken from Gandhi's later reconstruction in *Satyagraha in South Africa*; in the contemporaneous report of that speech, we find but one sentence vaguely pointing in that direction: "It was merely a question of one ounce of practice which was worth whole tons of speeches and writings." (*Indian Opinion* 22.2.1906, *CW* 5, 419). The characteristic ideas begin to emerge two years later; in an article "Wherein Lies Victory" (*Indian Opinion* 7.3.1908, *CW* 8, 129) responsibility for what eventually turns out to be the "truth" is placed in God; in a speech on August 16, 1908 the concept of a test on truth not harmful to either side is advanced (*Indian Opinion* 22.8.1908, *CW* 8, 459).

[107] Both aspects are present in the speech last mentioned (n. 106) calling for the burning of registration certificates: "It cannot benefit

on non-violence i.e. communicative action as "the law of our species" derives from here.[108] In terms of the distinction from animals satyagraha was justified in 1907.[109] Characteristically Gandhi had some initial difficulties in establishing the distinctive element in the case of negroes.[110] But the essential human equality is clearly defined that way; it refers to an *active* identity of human beings as being capable of realizing (= acting) their metaphysical condition.

One might wonder whether the pronounced division between humanity and sub-human life is somewhat "un-Indian"; whether it represents the influence of Western individualism and

[107] (cont.)
the Colonists to have British Indians in the Transvaal who are not men but who may be treated as cattle..." (p. 458); "... it is open to us to clothe us with an undying franchise, and this consists in recognizing our humanity, in recognizing that we are part and parcel of the great universal whole, that there is the Maker of us ruling over the destinies of mankind and that our trust should be in Him rather than in earthly beings..." (p. 459). From later times cf. *Young India* 1.7.1926 *CW* 31, 76: "... I would extend the hand of fellowship to the whole of the world irrespective of caste, colour or creed, for, I claim the whole of mankind to be the children of one God, having absolutely the same capacity for self-relization."

[108] "Non-violence is the law of our species as violence is the law of the brute." ("The Doctrine of the Sword", *Young India* 11.8.1920, *CW* 19, 131 ff., 133).

[109] "Why Do We Oppose Law" (*supra* n. 81), at 400, 401): "... the white people, by introducing this law, wish to show that the Asiatics are not men but beasts;..." "... if this law exists to insult us and to treat us like animals, we want to know whether animals know God or understand religion."

[110] See his somewhat strained though friendly observations in *Satyagraha in South Africa*, ch. 2, (*CW* 29, 14): "If we acknowledge morality as the basis of religion, the Negroes being moral may be held even to be religious. They have a perfect grasp of the distinction between truth and falsehood."

of "legal equality".[111] It in fact reminds one of what Dumont has described as beginning of the "modern revolution" - the breaking of the hierarchical chain of subordination and the establishment of a man-nature dualism.[112] It is, therefore, interesting to see Gandhi recognizing a kind of common identity uniting man and animal.[113] In later years he is even led to speak of equality in that context.[114] But this clearly is a different, *passive identity*; it is here that Erikson's description of identity felt by the common exposure of life to death comes into its own. Its secondary nature is indicated by the fact that identification is unilateral: derived from human identity as realizing Truth it imposes a unilateral duty of *compassion* and *protection* on man.[115] As between humans the duty is reciprocal *respect* and *service*.

111 Conversely M. Weber, op.cit. (*supra* n. 21) p. 144 suggests that the continuity between animals, human beings and even gods in the doctrine of re-incarnation may have hampered the development of a concept of human natural rights.

112 *From Mandeville to Marx*, p. 48 f. (with reference to Locke).

113 *Autobiography*, "Farewell": "Identification with everything that lives..."; "To see the universal and all-pervading spirit of Truth face to face one must be able to love the meanest of creation as oneself." *CW* 39, 401).

114 Conversation with Rao Bahadur Rajah on the question of untouchability: "Hinduism insists on the brotherhood not only of all mankind, but of all that lives ... The moment we have restored real living equality between man and man, we shall be able to establish equality between man and the whole creation." *Harijan* 28.3.1936, p. 51.

115 Comparative lecture on Hinduism (*supra* n. 87) *CW* 4, 408: (The way to achieve *moksha* is) "to have compassion for all living beings, and to live in truth." Cf. the episode *Autobiography* 2, 22 where Jesus and Buddha are compared: "'Look at Gautama's compassion' said I. 'It was not confined to mankind, it was extended to all living beings.'" (*CW* 39, 132). For Protection: "Hinduism", *Young India*, 6.10.1921 con-

It remains to consider the second factor giving a practical shape to the duty of realizing truth. This was the peculiar condition of the Indian community in South Africa doubly demonstrating, in almost experimental purity, one of the basic inconsistencies in traditional society: that the labour most fundamental and necessary to the common welfare is downgraded in the hierarchy of value, and the labouring classes are not only exploited but also humiliated. When Gandhi was beginning to protest against the ignominious treatment of the "coolie" in Natal he could rely on a public awareness that imported labour, i.e. this very "coolie", had been considered indispensable after the abolition of slavery to sustain the plantation economy.[116] What is truly remarkable, however, is that already in the earliest petitions he starts comparing the situation with that of the "Pariah".[117] In this he goes beyond mere rhetorical flourish; when generally protesting, for instance against un-christian treatment of the Indians by the whites he adds, slightly out of context that "The Man, who taught us to love our enemies ... and who swept away the distinction between the Jew and the Gentile would never brook a disposition that causes a man to be so proud of himself as to consider himself polluted even by the touch of a fellow-being."[118]

[115] (cont.)

cerning cow protection and the cow as a "poem of pity": "Man through the cow is enjoined to realize his identity with all that lives... Protection of the cow means protection of the whole dumb creation of God." (*CW* 21, 248). About the obligation being unilateral: "More Animal Than Human", *Young India* 8.7.1926, *CW* 99 ff., 101.

[116] Huttenbach (*supra* n. 76) 1 ff.; Eric A. Walker, *A History of Southern Africa*, 3. ed., 1957, 522; H. Tinker, *A New System of Slavery*, 1974; Gandhi's "Open Letter" to the Members of the Natal Legislative Assembly, Dec. 1894, *CW* 1, 144 ff., 145, relying on indigenous testimony.

[117] E.g., Petition to Lord Ripon, 17.7.1894, *CW* 1, 116 ff., 121.

[118] "Open Letter" (n. 116) at p. 161/182.

The great majority of indentured labourers were recruited from low Shudra and untouchable castes. And soon Gandhi saw himself confronted with the argument that he was demanding a status for these people which they were being denied by their own society. He was, however, already aware of the contradictory situation.[119] The promptness and intensity in which he turned to the problem in his own society at this early juncture singles him out from other nationalist leaders; it marks the transition from a political cry for racial equality - which has turned out to be more often than not, a cry for equality merely of the well-todo or of ruling elites on the international plane - to a deeper concern for the human condition.[120]

The "inconsistency" in Hindu society could be analyzed thus: in a social order hierarchically oriented towards the ideal of purity the man who purifies (an activity interpreted by Gandhi as including ordinary cleaning work and sanitation)

[119] Pyarelal, *Early Phase*, p. 477 f. refers to an article which appeared in a Johannesburg paper in 1895 in reply to the "Open Letter" as having stirred Gandhi's conscience in the matter; but see already the quotation from the open letter itself. Be that as it may, Gandhi's quick response points to an existing predisposition which seems to confirm his claims of an earlier aversion to untouchability: cf. the boyhood story of the sweeper Uka, *Young India*, 27.4.1921, *CW* 19, 569 ff.

[120] The introductory sketch of Gandhi's early activities outlined by J. Brown, *Gandhi's Rise to Power*, 1972, ch. I, picturing him as mainly concerned with the affairs of the well-to-do "Arab" traders who were his clients, up to 1906 when he was forced by necessity and expediency to broadbase his tactics, does less than justice to him. To be sure he broadly divided his activities into court work for paying clients and more general political activity. In the latter, however, he took up the cause of indentured labour from the very beginning, including attendance to individual cases like the famous Balasundaram (1895). It is, in fact, impressive to see how he transcended the framework of "limited politics" virtually from the first moment.

is ranked at the bottom, permanently stigmatized and outlawed as absolutely impure (untouchable, unapproachable &c.). Perceived in the light of Tolstoy's pathos of truthfulness this observation could be generalized to the maxim that man deceives himself about his true condition so long as he is not prepared personally to do the work necessary for his existence. From the list of social inconsistencies in Tolstoy's *The Kingdom of God is Within You* one sentence may have stuck in Gandhi's mind: "We are all brothers, yet every morning a brother or a sister must empty my pot."[121] In 1898 we find him almost turning his wife out of his home because she would not cheerfully empty the chamber pot of a Christian *Panchama* clerk staying with them.[122] Before this incident he had already been doing sanitary plague prevention work in Rajkot, laying "special emphasis on the cleanliness of latrines."[123] From then on he will pester the "respectable Indian" (whom he was still holding up as a legal abstraction in Court room) with his latrine cleaning fad.[124] The organization of an Indian voluntary Ambulance Corps at the beginning of the Boer War 1899, comprising "respectable Indians" as well as indentured labourers, was marked by a decision not to discriminate between dignified work and other.[125] On the general plane the *résumé* is: "There is no question of inferiority or superiority among occupations which are essential for

[121] Loc.cit. n. 97, p. 141.

[122] *Autobiography* 4, 10, *CW* 39, 222.

[123] 1896; *Autobiography* 2, 25, ibid. p. 137 ff. Note his "agreeable surprise" at the cleanliness of untouchables' quarters and the almost symbolic story of the temple priest who had never as much as seen the latrine part of his premises.

[124] E.g., the Congress delegates on the Calcutta Session, 1901; see also his clash with members of Gokhale's Servants of India Society 1915 (M.R. Jayakar, *The Story of My Life*, I, 1958, 316).

[125] *Satyagraha in South Africa*, ch. 9 (*CW* 29, 64).

man's existence."[126] Consequently: "... there cannot be a single human being on earth who should be considered untouchable."[127]

VI.

With the last quotations we have already reached the phase where the theatre of action has shifted to India. To summarize what had happened during Gandhi's formative years in South Africa: there seems to have taken place a gradual undermining of his "official" character as a barrister pleading civilized equality under established law by his more comprehensive activities as a social reformer, driven by a growing realization of the truth of metaphysical human equality, and of the "untruth" of social discrimination based on hierarchical gradation of labour. The end of this erosive process was reached with his giving up legal practice and moving to "Tolstoy Farm" in 1910.[128] In effect human equality may be concluded to have been established not as a *fact* of nature or society, not even as a negative fact like mortality, but on the normative plane: contrafactual (i.e. depending not on genetic data, mental outfit, I.Q. and the like), as an imperative call to action directed towards "Truth". This is a common anthropological dimension singling out man from other living species and at the same time making him *recognize* that (to use Gandhi's words) he is "part and parcel of the great universal whole".[129]

[126] Leaflet for striking workers Ahmedabad, 2.8.1918, *CW* 14, 224 f.

[127] Speech in Madras, 16.2.1916, *CW* 13, 233.

[128] The first satyagraha pledge in 1906 had still been taken in the name of Imperial citizenship, see text of the Resolutions (*CW* 5, 422) and Gandhi's original speech, ibid. 419: "He felt he had done the right thing in advising them to take this step as loyal British subjects." Even in jail to be "classed with the natives" was still resented as degradation: *Indian Opinion*, 7.3.1908, *CW* 8, 120 ("My Goal Experiences").

[129] See *supra* n. 107.

Returning to India in 1915 Gandhi is now confronted with the full reality of Indian society and its manifold divisions which had appeared obliterated in the emergency situation of the Indian community in South Africa.[130] He feels that he now has "to learn what Hinduism really is."[131] And the task naturally will be to test the egalitarian conception which has matured abroad against the unbroken presence of the caste system in the motherland. There is one firm principle which he throws out as a challenge: untouchability is unacceptable; "if it was proved to me that this is an essential part of Hinduism, I for one would declare myself an open rebel against Hinduism itself." [132] In the logic of this, and from earlier observations on "vain" or "unhealthy caste distinctions"[133] one would expect an unequivocal condemnation of the caste system as an "untruth". Surprisingly however, he first reasoned pronouncement on the question in 1916[134] is a qualified defense of the caste system. He declares his opposition to movements for its wholesale abolition, mainly on three grounds:

130 "South Africa ought to be to the British Indians a great Puri where all divisions are abolished and levelled up." *Indian Opinion*, 20.8.1903, *CW* 3, 412.

131 Speech at Reception at Mayavaram, 1.5.1915, *CW* 13, 69.

132 Ibid.

133 See the outburst in his Report on jail experiences, *Indian Opinion*, 31.1.1909, *CW* 9, 180 f.: "Thanks to these hypocritical distinctions of high and low and to the fear of subsequent caste tyranny, we have, I think, turned our back to truth and embraced falsehood... I wish that Indians who join this movement also resort to satyagraha against their caste and family and against evil wherever they find it..." See also his advice to Maganlal Gandhi going to Santiniketan (4.12.1914, *CW* 12, 558) to "help to remove whatever unhealthy caste distinctions remain..."

134 "The Hindu Caste System" published in the Marathi monthly *Bharat Sevak*, October 1916; *CW* 13, 301. See also his speech in Ahmedabad, 5.6.1916, ibid. 277.

(a) the caste system is so deeply rooted in the Indian social structure that it is advisable to reform it rather than to uproot it;

(b) the caste system may itself be used as an agency of social reform and the attainment of swaraj, the different castes being "so many divisions of an army"[135]

(c) its true nature is moral restraint, situating the individual within society and limiting his boundless pursuit of happiness.[136]

Equality is not mentioned at all. But leaving aside the more tactical arguments in (a) and (b), in (c) a new element seems to have appeared, indicating a certain tension to the principle of equality and necessitating a more sustained effort at integration. This new element is what might be called Gandhi's Anti-Mobilism. It has been proclaimed in provocative language in *Hind Swaraj*, in the apogee of Gandhi's criticism of modern civilization.[137] Later it is abstracted and refined to express a tendency of universal application: a primary localization of the individual within his natural and social position, to protect his individuality against the "modern rush" and the pull

[135] The ensuing reflection on the general not knowing the soldiers individually but getting them to work through the respective captains is an interesting illustration of J. Brown's analysis of his techniques in using "sub-contractors" for mass mobilization. (*Gandhi's Rise to Power*, *supra* n. 120).

[136] Free rendering. Even dining and marriage restrictions are justified on that rationale.

[137] See particularly the famous attack on railways, ch. 9 (*CW* 10, 26). The inner connection with this critical trend suggests that the new element is not a by-product of "coming home" to India but rather of the extreme disenchantment with the West originating already during the last years in South Africa. In this context see the cryptic remark in a letter to Jamnadas Gandhi (2.7.1913, *CW* 12, 127): "Caste-distinctions are both necessary and unnecessary."

of boundless mobilization.[138] The word which comes to be used for this is *swadeshi*, the old Bengali catch-word for the boycott of foreign manufactured goods, now expanded and spiritualized typically Gandhi fashion to express holding on to one's primary environment in the literal and figurative sense.[139]

For a Western mind to whom the idea of mobility has become synonymous with freedom, connoting Exodus, escape from tyrannical conditions, emancipation and social uplift, free movement and expansion, the contrary emphasis seems quaint at first sight, thoroughly reactionary anyhow. As the historical origin of *swadeshi* suggests, however, mobility and its concomitants had different connotations in the colonial age also: world-wide exploitation by the industrial countries, destruction of indigenous industries by free trade, indentured labour, decomposition of cultural identity in a world-wide process of levelling *down* etc. In the light of this experience swadeshi may be understood as being basically an aspect of freedom and individuality, national identity at the collective level, in a word: of holding one's own. We need not go into all ramifications of application. What matters for present purposes is the consequence apparently dawning upon Gandhi in 1916 that an institution confining a man broadly within the ambit of his original position cannot squarely be rejected out-of-hand.

138 "I whole-heartedly detest this mad desire to destroy distance and time, to increase animal appetites and go to the ends of the earth in search of their satisfaction." *Young India*, 17.3.1927, *CW* 33, 163 ff., 164 ("No and Yes").

139 The general idea is expressed in Gandhi's speech in Madras, 14.2.1916, *CW* 13, 219: "Swadeshi is that spirit in us which restricts us to the use and service of our immediate surroundings to the exclusion of the more remote." For further explication and derivations like self-sufficiency, self-reliance etc. see generally the section on swadeshi in the compilation by V.B. Kher, *Economic and Industrial Life and Relations*, Vol. II, 1957, 56 ff; the explanations of the Ashram vows of swadeshi in *CW* 46, 254 and 50, 217.

In the reflection on man's truth as man's law this individualized condition emerges as *svadharma*.[140]

Clearly, however, this is a principle of differentiation, even of accepting contingency, and as such opposed to equality. There is a problem of reconciliation consequently. The problem posed is to establish equality while recognizing valued and significant differences - i.e. without disowning differences by holding out a prospect of an eventual levelling or of an individual escape through mobility.

The solution is already indicated on the conceptual plane by the introduction of the term *svadharma* to designate legitimate difference. From the initial defence of the innumerable endogamous divisions (*jati*) Gandhi moves to a compromise position: to accept as canonical only the four main divisions (*varna*) which he interprets as purely functional divisions without any hierarchical gradation. This surprising contention is raised by him in open challenge to textual traditions and accepted interpretation: "I believe in *varnashram* of the Vedas which, in my opinion, is based on *absolute equality of status*, notwithstanding the passages to the contrary in the Smrtis and elsewhere."[141] The caste groups, on the other hand, which he had at first apologetically supported, then held to be an indifferent phenomenon,[142] end up being condemned in strong terms.[143]

[140] In terms: "... svadeshi is *svadharma* applied to one's immediate environment." (*Young India*, 18.6.1931, *CW* 46, 254 ff. "The Law of Swadeshi").

[141] *Harijan*, 16.11.1935, 316 ("Caste has to go"), emph. add.

[142] E.g., Nov. 1917, *CW* 14, 73: "The caste system is a hindrance, not a sin. But untouchability is a sin..."

[143] E.g., *Young India*, 24.12.1927, *CW* 35, 519: "Down with the Monster of Caste that masquerades in the guise of varna." See also the article cited n. 141.

The solution to recur on the Vedic divisions is not a new one. A functional interpretation of the varna system had already been tried by Dayananda Saraswati and Vivekananda, in order to get around the hereditary principle in the caste order.[144] Gandhi insists on the hereditary principle: "a man shall follow the profession of his ancestors for earning his livelihood", but interprets this to be a natural tendency only, like the law of heredity;[145] the aim is to minimize the need for competition and jobseeking in order to set free energies for spiritual pursuits.[146] The details and further explanations are often odd and need not concern us here.[147] The humour of these teachings, taken literally, can hardly have escaped Gandhi in view of his own biographical background. What is of general interest, however, is the way the anti-hierarchical interpretation is established. From Gandhi's own words it is clear that he does not regard this as the traditional view. On the other hand, it is something more than paradoxy or capricious provocation. Gandhi is able to exploit a latent possibility within the system. This is implied by his going back to the traditional divisions and to the traditional use of *svadharma*.[148] *Svadharma* implies a *sādhāraṇa dharma* or common dharma if the system is to be a connected whole and not merely an incoherent conglomeration of autonomous groups. The minimum of *sādhāraṇa dharma* logically implied is the "distributive" dharma or conflict norm laying down that every group or every individual has to follow his

144 Cf. G.-D. Sontheimer, "Die Ethik im Hinduismus", in: *Ethik der Religionen*, Stuttgart 1980, p. 392.

145 Loc.cit. n. 143 at p. 518; *Harijan*, 12.12.1948, p. 346.

146 Ibid. and *Young India*, 20.10.1927, *CW* 35, 105.

147 General reference may be made to the compilation *Varnashramadharma*, Ahmedabad 1962, assembling some of the major texts.

148 How far Gandhi used *svadharma* also in the modern individualistic sense need not concern us here; cf. generally G.-D. Sontheimer, loc.cit. n. 144 at p. 393, with further references.

own dharma. *Svadharma*, in other words, is part of an encompassing dharma, even if that general dharma ordains hierarchy. All this but mirrors the general logical structure of equality, inequality and hierarchy discussed before.

This structure has not always been in the foreground and has sometimes been overlooked particularly by Western observers.[149] Nevertheless it must have been present at least half-consciously as a presupposition; at times it comes out rather clearly as in Manu VIII 41 f.:

> "(A king) who knows *dharma* must inquire into the *dharmas* of castes (i.e. sub-castes), of districts, of guilds, of families and (thus) settle the *dharma* proper to each."[150]

By using and emphasizing this latent element Gandhi is able to import the notion of equality into the system.[151] He does so by giving it a more substantiated content which is *service*. The essence of the system and the common denominator of all the individual duties is that the whole is a system of services i.e. *contribution* by the individuals consciously motivated towards the consonance of the whole. In contrast with modern conceptions of an economy moving by egoistical motivation and miraculously integrated by a providential *vis a tergo*,

149 Notably by M. Weber, cf. *supra*, text accompanying n. 23.

150 I use the rendering by Derrett in a paper on M. Weber's understanding of Hindu law "The Development of Indian Law" (in print). Derrett draws attention to the double meaning of *dharma* in this text. For *sādhāraṇa dharma* generally see Sontheimer loc.cit. (n. 144) 412 ff.; Derrett, *A Critique of Modern Hindu Law*, 1970, 34 ff.

151 There are explicit reasonings of the structure occasionally, like in *Harijan*, 4.3.1933, *CW* 53, 454:"....All these four labours are regarded as duties to be discharged by every one of them for the protection and advancement of dharma, and everyone who performs his duty to the best of his knowledge and ability gains equal merit with the rest, if the latter, too, do likewise. The merit, therefore, consists not in being one or the other, but in the performance of the duty assigned to it."

the "hidden hand", this equal motivation as service may indeed be stressed as fundamental in the dharma system and thus justify valuing the status of all the participants as fundamentally equal. The concept of service even merges with the trusteeship doctrine to postulate equality in respect to all positional advantages, ascribed as well as achieved: superior natural gifts, for instance, are to be used as trust for the common benefit and imply neither a status difference nor, for that matter, higher wages.[152]

Having thus established the concept of common dharma with a specific content, the traditional *sādhāraṇa dharmas* can easily be integrated with it,[153] as also some of Gandhi's special concerns, adding further colour. Thus "To speak the truth is a dharma common to all";[154] the duty of non-violence forming part of many of the traditional lists is, of course, stressed;[155] the abolition of untouchability itself is a common dharma of all Hindus[156] - presumably because untouchability is an "untruth".

Here we return to practical consequences from the somewhat abstract conceptual redefinition. If the primary merit of Gandhi's exertions in this field lies in having rediscovered a legitimate place for human equality within the traditional framework we cannot expect a practical genius like him to rest there. The practical solutions he was trying to advance are better known, and can only be indicated in rough outline here. The basic idea is that by abolition of untouchability the whole system would loose

[152] *Harijan*, 2.8.1942, 249 ("For the Princes"); Interview 23.9.1946 as reported in G.D. Tendulkar, *Mahatma*, Vol. 7, 2. col. 1962, p. 219.

[153] For traditional lists of *sādhāraṇa dharma* see Sontheimer (n. 144), 418 ff.

[154] Discourses on the "Gita", *CW* 32, 183.

[155] E.g., "It is our natural dharma to be careful not to destroy even an ant as we walk." (*Navajivan*, 20.9.1925, *CW* 28, 207).

[156] *Harijanbandhu*, 19.3.1933, *CW* 54, 133 f.

its hierarchical meaning being deprived of its fundament.[157] This was going to be achieved not by opening escape routes of upward mobility for some untouchable leaders, but by downward identification of high caste Hindus with their "lowest" brethren. This, basically, was the difference of approach with Ambedkar, leading to the conflict between the two. Gandhi's insistence to identify himself with the lowest class of untouchables, with the *Bhangi* and not e.g., with the *Mahar*, though perfectly logical, may have added some spice to the conflict.[158] From hindsight it may perhaps be said that both ways have not succeeded so far: political emancipation by constitutional means has led to the formation of a new untouchable elite divorced from the rest; "identification" has tended to produce hypocrisy rather than tangible improvement. No one could expect a revolution of this dimension to be brought about within one generation, and perhaps a combination of both methods still is the only hope.

The practical "purification" of the caste system was to be furthered by bodily labour, as in South African days. With respect to untouchability: "Everyone must be his own scavenger ... Scavenging, thus intelligently taken up, will help one to a true appreciation of the equality of man."[159] The same prescription of bodily labour as a common duty was to purify Hinduism generally. The relevance of this point is evident. But there are also evident difficulties with established scriptural and practical tradition.[160] Gandhi tried

[157] E.g., *Harijan*, 11.2.1933, *CW* 53, 259 ("Dr. Ambedkar and Caste"); ibid. 12.1.1934, *CW* 56, 428.

[158] Cf. the exchanges with Ambedkar in 1932, *CW* 51, 458 ff. - Gandhi replying to a question about untouchability amongst Harijans selects the following illustration: "A *Mahar* would keep a *Bhangi* at arm's length." *Harijan*, 25.7.1936, *CW* 53, 160.

[159] M.K. Gandhi, *From Yeravda Mandir*, 1932, ch. IX; a different version in *CW* 44, 150 (16.9.1930).

[160] See the discussion on restrictions of agricultural work by Brahmins in: J. Laping, *Die landwirtschaftliche Produktion in Indien*, 1982, 56 ff.

to overcome these by describing manual work as *yajña* rather than service,[161] that is to say by ritualising it as tribute owed for man's bodily existence. In the last analysis he probably would not have been deterred by remaining inconsistencies. "It is sheer fanaticism, and will lead to the degradation of dharma, to look upon efforts at eradicating our evils as deriving their inspiration from other religions and to cling on to those evils."[162]

For the varna system as a whole he more and more stressed the idea that the system had broken down entirely and that to resuscitate it, the meaning of "service" had to be learned afresh. For this age, therefore, the common duty of all Hindus was to accept Sudra dharma as the closest approximation - though he took care to distinguish "service" from mere "labour" (done involuntarily and out of self-interest) in the context.[163] Thus the proletariat is not the real Sudra class. The realization of *varnadharma* then becomes a matter of the distant future, perhaps an eschatological vision.[164] In the meantime the egalitarian implications of dharma are subverting the caste order altogether.

In the end, recalling initial expectations should we not ask whether there is anything really new to be learned from all this - apart from the fact that Gandhi may have been able to solve the intellectual problems of his own tradition for himself? Elaboration of a balance sheet certainly is not called for at this place. A careful reader would not fail to notice a number of distinguishing elements deserving further

[161] *Harijan Sevak*, 21.4.1933 (*CW* 54, 468 "Five Questions on Varnadharma").

[162] *Navajivan*, 12.12.1960, *CW* 19, 98 ("'Vaishnavas' and 'Antyajas'" defending himself against the accusation of importing Western ideas).

[163] 6.5.1939, *CW* 69, 220; 1.6.1935, *CW* 61, 126.

[164] *Harijanbandhu*, 19.3.1933, *CW* 54, 131.

consideration. Attention may perhaps be drawn to two points: one, the contrafactual, essentially moral derivation of the equality principle rules out recognition of even natural differences, like talent, intelligence etc. as legitimation of status hierarchy. Secondly, developing a traditional line of Indian thought: differences of individuals or groups are not only differences of will (arbitrariness), contingencies or remnants - but it is the very recognition of difference having a law of its own which relates it back to the common law of human equality.

BIBLIOGRAPHY

of J. Duncan M. Derrett's works on India

BOOKS AND ARTICLES

1952

1 "The Future of Malabar Personal Law within the Framework of the Projected Hindu Code Bill." *Kerala Law Times (Journal)*, pp. 9-20.

2 "A New Light on the Mitākṣarā as a Legal Authority". *Journal of Indian History* 30, pp. 35-55.

3 "The Relative Antiquity of the Mitākṣarā and Dāyabhāga". *Madras Law Journal*, 21st August, pp. 9-14.

4 "Nullity in the Hindu Law of Marriage". *54 Bombay Law Reporter (Journal)*, pp. 115-119.

5 "The Hindu Code". *Thought*, Delhi, February, pp. 7-8.

6 "A Critique of the Hindu Code Bill, I-IV". *Thought*, Delhi, May-June.

1953

7 "Some Troublesome Cases in Adoption". *55 Bombay Law Reporter (Journal)*, pp. 1-8.

8 "The Hindu Marriage and Divorce Bill, 1952". *55 Bombay Law Reporter (Journal)*, pp. 41-44.

9 "Fraud and the Modern Hindu Law". *Magazine of the Government Law College*, Bombay, pp. 7 ff.

10 "The Hindu Marriage and Divorce Bill, 1952, and its probable effect in Malabar". *Kerala Law Times (Journal)*, pp. 10-14.

11 "The Hindu Minority and Guardianship Bill, 1953". *55 Bombay Law Reporter (Journal)*, pp. 89-94.

12 "The Hindu Minority and Guardianship Bill". *Thought*, Delhi, August, pp. 5-6.

13 "Vyavahāra: Light on a Vanished Controversy from an unpublished Fragment". *BSOAS*, XV, 3, pp. 598-602 = *ECMHL*[*] I. 8o.

14 "Unauthorized Alienations of Joint Family Property: Can they ever be void rather than voidable?" *55 Bombay Law Reporter (Journal)*, pp. 105-111.

15 "The Future of the Hindu Law of Succession". *55 Bombay Law Reporter (Journal)*, pp. 121-129.

16 "The Criteria for Distinguishing between Legal and Religious Commands in the Dharmaśāstra". *All India Reporter*, pp. 52-53, 57-62; also *Journal of the Nagpur University College of Law*, (1953-54), pp. 51-70.

1954

17 "Religion and Law in Hindu Jurisprudence". *All India Reporter*, pp. 79-84.

18 "The Hindu Succession Bill, 1954". *56 Bombay Law Reporter (Journal)*, pp. 97-106.

19 "The Hindu Succession Bill, 1954, and its Probable Effect in Malabar". *Kerala Law Times (Journal Section)*, pp. 49-64.

20 "Three Questions Arising out of the Hindu Women's Rights to Property Act, 1937". *56 Bombay Law Reporter (Journal Section)*, pp. 137-146.

21 "Law and the Secular State in India". *Eastern World*, VIII, 11, pp. 12-14.

22 "Inheritance of Property from Hindus". (A series of three articles). *Thought*, Delhi, December , and January 1955.

[*] *ECMHL = Essays in Classical and Modern Hindu Law* (Leiden, Brill).

1955

23 "A Strange Privy Council Decision and the Hindu Widow's Remarriage Act, 1856". *All India Reporter (Journal Section)*, pp. 10-19.

24 "Inheritance By, From and Through Illegitimates at Hindu Law". *57 Bombay Law Reporter (Journal Section)*, pp. 2-22; 25-39 = *ECMHL* III. 182.

25 "Hindu Law: Mitakshara: The Pious Obligation and the Doctrine of 'Antecedency': The End to a Prolonged Controversy?" *18 Supreme Court Journal (Journal)*, pp. 139-150 = *ECMHL* IV. 173.

26 "The Hindu Marriage Bill, 1954". *Thought*, Delhi, April.

27 "Hindu Law: Adoptive Mothers: Another Difficult Problem for the Supreme Court". *18 Supreme Court Journal (Journal)*, pp. 217-232 = *ECMHL* III. 97.

28 "Ceylon and the Swabhasa Problem". *Thought*, Delhi, May.

29 "An Important Development in the Law of Adoption". *57 Bombay Law Reporter (Journal)*, pp. 73-85.

30 "More about Illegitimacy at Hindu Law: *Sadu Ganaji v. Shankerrao*". *57 Bombay Law Reporter (Journal)*, pp. 89-98 = *ECMHL* III. 220.

31 "The Law Student and Legislation". *University College of Law, Calcutta, Magazine* 23, pp. 28-32.

32 "Prospects of an Indian Civil Code". *Thought*, Delhi, 3 September, pp. 5, 16-17.

1956

33 "The Date and Provenance of Caturbhuja Miśra". *BSOAS*, XVIII, 2, pp. 367-371.

34 "The End of 'Untouchability'". *Eastern World*, X, pp. 9-11.

35 "Hindu Law: the Dharmashastra and the Anglo-Hindu Law - scope for further comparative study". *58 Zeitschrift für vergleichende Rechtswissenschaft*, pp. 199-245.

36 "Divesting: An Important Full Bench Decision on Adoption". *58 Bombay Law Reporter (Journal Section)*, pp. 1-11 = *ECMHL* III. 114.

37 "Further Note on Divesting: The Case of *Narayan Bhagwantrao v. Namdeo Balobarao*". *58 Bombay Law Reporter (Journal)*, pp. 11-13.

38 "Conflict of Laws: Adoption and a Difficult Bombay Decision". *58 Bombay Law Reporter (Journal)*, pp. 33-41.

39 "Two Difficult Bombay Cases in Hindu Law". *58 Bombay Law Reporter (Journal)*, pp. 97-104.

40 "The Death of *Damduppat?*" *58 Bombay Law Reporter (Journal)*, pp. 65-70.

41 "On the Rights of the separated Son under Hindu Law". *19 Supreme Court Journal (Journal)*, pp. 103-111.

42 "The Legal Status of Women in India". *All India Reporter (Journal Section)*, pp. 73-83.

43 "Private International Law - Adoption (A Note on a Privy Council Decision)". *Modern Law Review*, 20, pp. 65-70.

44 "Estudio preliminar sobre la adopción". *6 Cuadernos de Derecho Angloamericano*, Instituto de Derecho Comparado, Barcelona, pp. 1-52.

45 "Kamalākara on Illegitimates". *58 Bombay Law Reporter (Journal)*, pp. 177-187 = *ECMHL* III. 230.

46 "Adoption in Aliyasantāna Law: An Illustration of the Relations between Custom and Law". *2 Madras Law Journal (Journal Section)*, pp. 97-103.

47 "An Indian Contribution to the Study of Property". *BSOAS*, XVIII,3, pp. 475-498 = *ECMHL* I. 333.

48 "The Origins of the Laws of the Kandyans". *14 University of Ceylon Review*, pp. 105-150.

49 "Svatva-Rahasyam: A 17th Century Contribution to Logic and Law". *Annals of the Oriental Research Institute (Madras)*, Centenary Number, pp. 42-48.

1957

50 "An Example of Tax-Evasion in Medieval India". *BSOAS*, XIX, 1, pp. 162-166.

51 "A Note on *Mahadu Laxman v. Hanamati Sakharam*, A.I.R., 1956, Bom. 624". *All India Reporter (Journal Section)*, pp. 42-43.

52 "The Rights of Purchasers at Court Sales of Items of Joint Family Property". *20 Supreme Court Journal (Journal)*, pp. 11-18.

53 "Some Problems Arising under the Hindu Succession Act, 1956". *59 Bombay Law Reporter (Journal)*, pp. 33-39, 49-55.

54 "A Query under the Hindu Succession Act: 'Relative'". *59 Bombay Law Reporter (Journal)*, pp. 68-70.

55 "The Devolution of a Separate Interest in Joint Family Property upon the Death of a Mitakshara Coparcener after 1937 and prior to June 17, 1956". *59 Bombay Law Reporter (Journal)*, pp. 82-87.

56 "Religion and Law in Hindu Jurisprudence". *Proceedings of the XXIIIrd International Congress of Orientalists*, pp. 225-226.

57 "Alienations at Hindu Law: A Revolutionary Full Bench Decision". *20 Supreme Court Journal (Journal)*, pp. 85-96.

58 *Hindu Law, Past and Present*. A. Mukherjee and Co., Calcutta.

59 *The Hoysalas*. Oxford University Press.

60 "Adoption in Hindu Law". *60 Zeitschrift für vergleichende Rechtswissenschaft*, pp. 34-90 = *ECMHL* III. 25.

61 "The Right to Earn in Ancient India". *Journal of the Economic and Social History of the Orient*, 1, pp. 66-96.

62 "Prohibition and Nullity: Indian Struggles with a Jurisprudential Lacuna". *BSOAS*, XX, pp. 203-215 = *ECMHL* I. 266.

63 "Recent Decisions and Some Queries in Hindu Law". *59 Bombay Law Reporter (Journal)*, pp. 178-189.

64 "The Tālavanas: Another Key to the Age of a Part of the Mahābhārata". *Journal of the Royal Asiatic Society*, pp. 215-218.

65 "The Codification of Personal Law in India: Hindu Law". *Indian Year Book of International Affairs*, VI, pp. 189-211.

66 "Developments in Hindu Law, 1955-56". *All India Reporter (Journal)*, p. 86.

1958

67 "Hindu Law in Kenya". *All India Reporter (Journal)*, pp. 1-6.

68 "Kuttā: A Class of Land-Tenures in South India". *BSOAS*, XXI, 1, pp. 61-81.

69 "Factum Valet: The Adventures of a Maxim". *International and Comparative Law Quarterly*, 7, pp. 280-302 = *ECMHL* III. 1.

70 "The Legal Position of Foreigners according to Classical Hindu Jurisprudence". *Recueils de la Société Jean Bodin*, IX, pp. 237-254.

71 "A Strange Rule of Smṛti, and a Suggested Solution". *Journal of the Royal Asiatic Society*, pp. 17-25 = *ECMHL* I. 217.

72 "Att. Gen. of Ceylon v. Ar. Arunachalam Chettiar and Others (1957), 3, W.L.R. 293; 304 (A Note on Two Privy Council Decisions)". *International and Comparative Law Quarterly*, pp. 160-164.

73 "Indian Studies at Oxford". *The Oxford Magazine*, March 13th, pp. 367-368.

74 "Hindu Law at the Cambridge Colloquium on 'The Co-existence and Interaction of Different Laws of Marriage and Divorce in the Commonwealth'". *All India Reporter (Journal)*, pp. 65-68.

75 "Estate Duty and the Nature of a Mitakshara Coparcener's Interest". *60 Bombay Law Reporter (Journal)*, pp. 161-172.

76 "Statutory Amendments of the Personal Law of Hindus since Indian Independence: General Report on Topic I-E-1." *British Legal Papers*, pp. 325-344.

77 "Statutory Amendments of the Personal Law of Hindus since Indian Independence: Individual Report." *American Journal of Comparative Law*, VII, 3, pp. 380-393.

78 "Anomalous Decisions from Patna on the Hindu Succession Act, 1956". *21 Supreme Court Journal (Journal)*, pp. 259-266.

79 "The Maintenance of Peace in the Hindu World: Practice and Theory". *Indian Year Book of International Affairs*, 7, pp. 361-387.

1959

80 "Tennekoon v. Duraisamy (1958), 2, W.L.R. 994 (A Note on a Privy Council Decision)". *International and Comparative Law Quarterly*, pp. 218-221.

81 "M.H. Quareshi and Others v. State of Bihar and Others (1958), A.I.R., S.C. 731 (A Note on a Supreme Court Decision)". *International and Comparative Law Quarterly*, pp. 221-224.

82 "The Relationship of a Married Woman to her Husband's Adopted Son in Hindu Theory and Practice: a Correction". *61 Zeitschrift für vergleichende Rechtswissenschaft*, pp. 1-5 = *ECMHL* III. 84.

83 "The Slayer's Bounty". *University of Ceylon Law Review*, pp. 27-41 = *ECMHL* III. 297.

84 "Sir Henry Maine and Law in India". *Juridical Review*, pp. 40-55 = *ECMHL* II. 260.

85 "*Bhū-bharaṇa, bhū-pālana, bhū-bhojana*: an Indian Conundrum". *BSOAS*, XXII, 1, pp. 108-123 = *ECMHL* I. 33.

86 "The Definition of Religion in Indian Law. Postscript to the Same". *61 Bombay Law Reporter (Journal)*, pp. 17-23, 38. *Sarada Vilasa Law College Journal*, 2, pp. 3-10.

87 "Sōmēśvara and the Kāḍava; Ciñcila: Three Corrections". *BSOAS*, XXII, 2, pp. 356-358.

88 "Nullity of Marriage and Adverse Possession by a Female". *61 Bombay Law Reporter (Journal)*, pp. 81-91.

89 "The Rights of an Illegitimate Son of a Śūdra by a Woman of a Twice-born Caste". *2 Madras Law Journal (Journal)*, pp. 19-21.

90 "The Legal Status of Women in India from the most ancient times to the present day". *Recueils de la Société Jean Bodin*, XI, pp. 237-267; see also Nr. 42.

91 "The Hindu Succession Act, 1956: An Experiment in Social Legislation". *American Journal of Comparative Law*, 8, 4, pp. 485-501.

92 "The Role of Roman Law and Continental Laws in India". *24 Zeitschrift für Ausländisches und Internationales Privatrecht*, pp. 657-685 = *ECMHL* II. 166.

1960

93 "Law and the Predicament of the Hindu Joint Family". *Economic Weekly*, pp. 305-311.

94 "Misdeeds of a Manager and the Pious Obligation". *All India Reporter (Journal)*, pp. 2-5.

95 "Nandakumar's Forgery". *English Historical Review*, pp. 223-238.

96 "Recent Decisions and Some Queries in Hindu Law (II)". *62 Bombay Law Reporter (Journal)*, pp. 17-32. See also Nr. 63.

97 "Divesting by an Adopted Son: A Pressing Problem for the Supreme Court". *23 Supreme Court Journal (Journal)*, pp. 43-57.

98 "Statutory Amendments of the Personal Law of Hindus since Indian Independence". *Rapports Généraux aux Ve Congrès International de Droit Comparé*, Brussels, pp. 101-124.

99 "India: 14. Law". *Encyclopaedia Americana*.

100 "Review of U.C. Sarkar; 'Epochs in Hindu Legal History'". *Zeitschrift für vergleichende Rechtswissenschaft*, 62, pp. 236-241.

101 "The Supreme Court and Acquisition of Joint Family Property". *62 Bombay Law Reporter (Journal)*, pp. 57-71.

102 "Ratan Kumari Tholia v. Sunder Lal Tholia (1959), A.I.R. Cal. 787 (A Note on a Calcutta Case)." *International and Comparative Law Quarterly*, 9, pp. 510-513.

103 "The Minor's Partition: A Lapse in the Supreme Court?" *All India Reporter (Journal)*, pp. 78-84.

104 "The History of 'Palladius on the Races of India and the Brahmans'. Palladius: De Vita Bragmanorum Narratio, alias Palladii de Gentibus Indiae et Bragmanibus Commonitorii necnon Arriani Opusculi Versio Ornatior". *Classica et Mediaevalia*, XXI, 1-2, pp. 64-99; 100-135.

1961

105 "Minor's Partition. A Reply to Shri B. Dayal's 'Comments'". *All India Reporter (Journal)*, pp. 10-11.

106 "Recent Decisions in Hindu Law". *Bombay Law Reporter (Journal Section)*, 63, pp. 1-8; 17-23.

107 "The Hindu Law relating to Preemption". *Adyar Library Bulletin, Jubilee Volume,* 25, pp. 13-27 = *ECMHL* II. 388.

108 "Illegitimates: A Test for Modern Hindu Family Law". *Journal of the American Oriental Society,* 81, 3, pp. 251-61.

109 "The Administration of Hindu Law by the British". *Comparative Studies in Society and History,* IV, 1, pp. 10-52.

110 "Sanskrit Legal Treatises Compiled at the Instance of the British". *Zeitschrift für vergleichende Rechtswissenschaft,* 63, pp. 72-117.

111 "J.H. Nelson: A Forgotten Administrator-Historian of India", in *Historians of India, Pakistan and Ceylon,* ed. C.H. Philips, Oxford University Press, pp. 354-72, = *ECMHL* II. 404.

112 "Judgements Fit for the Drawer". *Journal of the Sarada Vilasa Law College (Mysore),* pp. 3-10.

113 "Admiralty Jurisdiction in India (Kamalakar Mahadev Bhagat v. Scindia Steam Navigation Co. Ltd., (1960), 62 Bom. L.R. 995)". *International and Comparative Law Quarterly,* 10, pp. 637-40.

114 "Fundamental Rights in the Indian Constitution: The Requirement of Reasonableness (A Note)". *International and Comparative Law Quarterly,* 10, pp. 914-916.

115 "Alienations and Attachments of Interests of Members of Joint Families in Kerala". *Kerala Law Times (Journal),* pp. 61-64.

116 "Preemption in Tesavalamai". *University of Ceylon Review,* 19, 2, pp. 105-116.

1962

117 "The Maintenance of Peace in the Hindu World". *Recueils de la Société Jean Bodin,* 14, pp. 143-177.

118 "The Development of the Concept of Property in India c. A.D. 800-1800". *Zeitschrift für vergleichende Rechtswissenschaft,* 64, pp. 15-130 = *ECMHL* II. 8.

119 "Thomas More and Joseph the Indian". *Journal of the Royal Asiatic Society*, pp. 18-34.

120 "Wealth-tax and the Hindu Joint Family: A Severe Blow for the Revenue - Comment on (1961) K.L.T. 905." *Kerala Law Times (Journal)*, pp. 18-21.

121 "Fictitious Transfers (*Benami*) and the Presumption of Advancement". *International and Comparative Law Quarterly*, 11, pp. 864-872.

122 "Indian Traditions and the Rule of Law among Nations". *International and Comparative Law Quarterly*, 11, pp. 266-272.

123 "Law and Custom in Ancient India: Sources and Authority". *Revue Internationale des Droits de l'Antiquité*, 3rd ser., 9, pp. 11-32.

124 "Justice, Equity and Good Conscience in India". *Bombay Law Reporter (Journal)*, 64, pp. 129-138, 145-152.

125 "The History of the Juridical Framework of the Joint Hindu Family". *Contributions to Indian Sociology*, 6, pp. 17-47.

126 "'Streedhanam' and Dowry Prohibition". *Kerala Law Times (Journal)*, pp. 43-46.

127 "Preemption amongst Hindus in Malabar". *Kerala Law Times (Journal)*, pp. 59-65.

128 "East Africa: Recent Legislation for Hindus". *American Journal of Comparative Law*, XI, 3, pp. 396-402.

129 "The Theban Scholasticus and Malabar in c. 355-360". *Journal of the American Oriental Society*, 82, 1, pp. 21-31.

130 "A Problem in the Book of Jubilees and an Indian Doctrine". *Zeitschrift für Religions- und Geistesgeschichte*, XIV, 3, pp. 247-262.

131 "Commorientes". *University of Ceylon Review*, XX, 1, pp. 55-83 = *ECMHL* III. 267.

1963

132 *Introduction to Modern Hindu Law*. Oxford University Press, Indian Branch, Bombay.

133 "Justice, Equity and Good Conscience", in *Changing Law in Developing Countries*, ed. J. N. D. Anderson, (*Studies on Modern Asia and Africa 2*). Allen and Unwin, London = *ECMHL* IV. 8.

134 "Freedom of Religion under the Indian Constitution and Excommunication". *International and Comparative Law Quarterly*, 12, pp. 693-697.

135 "The Supreme Court and Preemption". *Bombay Law Reporter (Journal)*, 65, pp. 1-4.

136 "Five Doubtful Cases in Hindu Law from Madras". *Madras Law Journal (Journal Section)*, 1, pp. 1-21.

137 "Succession by a Murderer's Issue; an Incorrect Decision from Punjab". *All India Reporter (Journal Section)*, pp. 5-6.

138 "The Purāṇas in Vyavahāra Portions of Mediaeval Smṛti Works". *Purāṇa* (Benares), V, 1, pp. 11-30.

139 "The 'Discussion of Marriage' by Gadādhara". *Adyar Library Bulletin*, 27, pp. 171-199.

140 "Divorce by Caste Custom". *Bombay Law Reporter (Journal)*, 65, pp. 161-169.

141 "Sanskrit Legal Treatises compiled at the Instance of the British". *Proceedings of the XXVth International Congress of Orientalists*, Moscow, 4, pp. 117-119.

1964

142 "Law and the Social Order in India before the Muhammadan Conquests". *Journal of Economic and Social History of the Orient*, VII, 1, pp. 73-120.

143 "Adoption by a Daughter-in-law and Divesting". *Madras Law Journal (Journal Section)*, 1, pp. 3-8.

144 "Tradition and Progress in Hindu Law: Marriage and Inheritance", in *La Tradition et le Développement Economique dans l'Asie du Sud-Est, 1962*. Editions de l'Institut de Sociologie, Brussels.

145 "Jewish Law in Southern Asia". *International and Comparative Law Quarterly*, 13, pp. 288-301.

146 "The Deserted Wife's 'Equity' and Modern Indian Law". *Bombay Law Reporter (Journal)*, 66, pp. 17-22.

147 "The Female's Share at Marumakkathayam Law". *Kerala Law Times (Journal Section)*, pp. 13-19.

148 "Avyavaharika Debts and the Decision of the Supreme Court in A.I.R. 1960 S.C. 964". *Kerala Law Times (Journal Section)*, pp. 21-30; *Lucknow Law Journal*, 10, pp. 1-13 = *ECMHL* IV. 186.

149 "*Guramma v. Mallappa*. A recent Reinterpretation of the Mitakshara by the Supreme Court". *Bombay Law Reporter (Journal)*, 66, p.129.

150 "Severance of Status in a Marumakkatayam Tarwad: the effect of *Raghavamma v. Chenchamma* A.I.R. 1964 S.C. 136". *Kerala Law Times (Journal Section)*, pp. 49-54.

151 "The Mahānirvāṇatantra and Modern Indian Law", in *Summaries of Papers at the XXVIth International Congress of Orientalists*, New Delhi (ed. R.N. Dandekar), pp. 92-94.

152 "Shares of Females at Dayabhaga Law after 17th June, 1956". *Gauhati Law College Journal (Golden Jubilee No.)*, pp. 1-7.

153 "Law", in *India, Pakistan and Ceylon*, (ed. by W. Norman Brown), University of Pennsylvania Press, revised edition, pp. 109-113.

154 "Aspects of matrimonial causes in modern Hindu Law". *Revue du Sud-est Asiatique*, 3, pp. 203-241.

155 "The ascertainment of a deceased coparcener's share". *Bombay Law Reporter (Journal)*, 66, pp. 169-173.

156 "Wealth tax and the joint Hindu family". *Kerala Law Times (Journal Section)*, pp. 69-74.

157 "A dictum in the Supreme Court on restitution and a decision there on partition". *Bombay Law Reporter (Journal)*, 66, pp. 137-145.

158 "Nullity of marriage amongst Hindus: some misleading dicta from Allahabad". *All India Reporter (Journal)*, pp. 97-98.

159 "A new approach to Dharmaśāstra". *Year Book of Legal Studies, Government of Madras*, 6 and 7, pp. 68-83.

160 "Bhāruci on the royal regulative power in India". *Journal of the American Oriental Society*, 84, 4, pp. 392-395.

1965

161 "Succession in Nigeria: the patchwork of the present scene and the common problems of the future", in *Studies in the Laws of Succession in Nigeria*, (ed. by J.D.M. Derrett), Oxford University Press, London, pp. 1-32.

162 "Alienation of the Mitakshara Individual interest(comment on A.I.R. 1965 Ker. 77)". *Kerala Law Times (Journal Section)*, pp. 7-9.

163 "The Hindu Women's Rights to Property Act, 1937: a sting in the tail". *Bombay Law Reporter (Journal)*, 67, pp. 35-41.

164 "Female sharers at a Mitakshara partition in the Travancore area of Kerala". *Kerala Law Times (Journal Section)*, pp. 36-40.

165 "Gifts of affection: the Supreme Court revises the Mitakshara law". *All India Reporter (Journal)*, pp. 34-37.

166 "The father's share: a forgotten chapter of Dayabhaga law". *Calcutta Weekly Notes*, 69, pp. xxxvii-xxxix.

167 "The Hindu Women's Rights to Property Act, 1937: a change of direction in Madras and an apology". *Madras Law Journal (Journal)*, 1, pp. 13-15.

168 "Hindu law in Goa: a contact between Natural, Roman and Hindu laws". *Zeitschrift für vergleichende Rechtswissenschaft*, 67, 2, pp. 203-236.

169 "A newly discovered contact between Arthaśāstra and Dharmaśāstra: the role of Bhāruci". *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, 115, 1, pp. 134-152 = *ECMHL* I. 120.

170 Gymnosophisten (Γυμνοσοφισταί), in *Der kleine Pauly*, 2, s. v.

171 "Powers of the Manager: an unexpected dictum in the Supreme Court". *Bombay Law Reporter (Journal)*, 67, pp. 96-98.

172 "Portuguese Law in the Congo: 1512-1518". *Zeitschrift für vergleichende Rechtswissenschaft*, 68, 1, pp. 81-85.

173 "Teaching Hindu Law in this Decade". *Jaipur Law Journal*, 5, pp. 18-35.

174 "The convert's polygamous marriage". *Bombay Law Reporter (Journal)*, 67, pp. 71-74.

175 "Private international law and personal laws. *International and Comparative Law Quarterly*, 14, pp. 1370-1375.

176 "Renunciation: an essay in Anglo-Hindu law". *Bombay Law Reporter (Journal)*, 67, pp. 167-176.

1966

177 "Law and Religion in Modern India: a report for the Uppsala Congress, 1966". *Kerala Law Times (Journal Section)*, pp. 15-19.

178 "May a Hindu woman be the manager of a joint family at Mitakshara law?" *Bombay Law Reporter (Journal)*, 68, pp. 1-11 = *ECMHL* IV. 126.

179 "Within how many years may a purchaser of an undivided interest in Joint Family Property sue for possession?" *Bombay Law Reporter (Journal)*, 68, pp. 109-113.

180 "Finding the reversioners after the coming into force of the Hindu Succession Act, 1956". *Andhra Weekly Reporter*, 1, pp. 33-34.

181 "Shares taken by females in Marumakkattayam family property: a conflict of Full Bench decisions in Kerala". *Kerala Law Times (Journal Section)*, pp. 61-70.

182 "Conflicts of Personal Law in Kerala". *Kerala Law Times (Journal Section)*, pp. 51-59.

183 "Attachments and alienations of undivided interests in Marumakkattayam joint families". *Kerala Law Times (Journal Section)*, pp. 29-49 = *ECMHL* III. 312.

184 "Wealth Tax and the lucky Muslims". *Kerala Law Times (Journal Section)*, pp. 71-73.

185 "Adoption, succession, and the present state of Hindu Law". *Bombay Law Reporter (Journal)*, 68, pp. 41-48 = *ECMHL* III. 150.

186 "Fiduciary principles, the African family and Hindu law". *International and Comparative Law Quarterly*, 15, pp. 1205-1216.

187 "The role of Dharmaśāstra in modern comparative legal history". *Madras Law Journal (Journal Section)*, 1, pp. 43-56.

188 "Hindu law in the second half of this century: a personal hypothesis". *Lawyer*, (Madras), 11, pp. 33-37.

189 "Indoskythia; Indos; Indischer Ozean; India; Kalanos", in *Der kleine Pauly*, 2 and 3, s. v.

190 "The reform of Hindu religious endowments", in *South Asian Politics and Religion*, (ed. Donald E. Smith), Princeton University, pp. 311-336.

191 "The Indian Civil Code or Code of Family Law". *Law Quarterly,* (Indian Law Institute, Calcutta), III, 3, pp. 137-144.

192 "The definition of a Hindu". *Supreme Court Journal (Journal Section),* 2, pp. 67-74; *Madras Law Journal (Journal Section),* 2, pp. 47-54.

193 "Promissory notes executed by Shebaits". *Kerala Law Times (Journal Section),* pp. 101-104.

194 "The Utopian alphabet". *Moreana,* 12, pp. 61-65.

195 "'Hinduism and international law': a review of K.R.R. Sastry's lectures at the Hague". *Indian Year Book of International Affairs,* XV-XVI, (1966-67), pp. 328-347.

1967

196 "The unchaste wife's alimony: a conflict of decisions". *Bombay Law Reporter (Journal),* 69, pp. 33-36.

197 "A round-up of bigamous marriages". *Bombay Law Reporter (Journal),* 69, pp. 89-93 = *ECMHL* IV. 85.

198 "The powers of guardians of non-Muslim minors: a sad misunderstanding". *Madras Law Journal (Journal Section),* 1, pp. 15-20.

199 "The concept of law according to Medhātithi, a pre-Islamic Indian jurist", in *Festschrift O. Spies,* (ed. W. Hoenerbach), Wiesbaden, pp. 53-76 = *ECMHL* I. 174.

200 "Acquisition of joint family property: how the presumptions operate". *Bombay Law Reporter (Journal),* 69, pp. 1-7.

201 "Greece and India: the Milindapañha, the Alexander-romance and the Gospels". *Zeitschrift für Religions- und Geistesgeschichte,* XIX, 1, pp. 33-64.

202 "A jurist and his sources: Medhātithi's use of Bhāruci". *Adyar Library Bulletin*, 30, 1-4, pp. 1-22 = *ECMHL* I. 151.

203 "Dharmaśāstra: The Origin and Purpose of the Smṛti. The Commentatorial Literature", in *Contributions to the Study of Indian Law and Society*, (ed. Richard D. Lambert), South Asia Regional Studies, University of Philadelphia, pp. 1-72.

204 "The Decision of a Bench of Five Judges on Marumakkattayam Law". *Kerala Law Times (Journal Section)*, pp. 55-59 = *ECMHL* III. 344.

205 "'Sarvasvadānam Marriage' and the Rights of Children Born of It". *Kerala Law Times (Journal Section)*, pp. 63-66.

206 "Section 488 of the Criminal Procedure Code and the Rights of Women: an Unruly Horse". *Madras Law Journal (Journal Section)*, 2, pp. 17-22; *Kerala Law Times (Journal Section)*, pp. 41-45.

207 "Vijñaneśvara and the Future of Hindu Law". *Allahabad University Law Journal*, II, 1, pp. 4-11.

208 "The Contribution of Mr. Justice Subba Rao to Hindu Law". *Journal of the Indian Law Institute*, IX, 4, pp. 547-567 = *ECMHL* III. 245.

1968

209 *Religion, Law and the State in India*. Faber and Faber, London.

210 "Family Arrangements in Developing Countries", in *Family Law in Asia and Africa*, (ed. J.N.D. Anderson), *(Studies on Modern Asia and Africa 6)*. Allen and Unwin, London, pp. 156-181 = *ECMHL* IV. 258.

211 "The Concept of Property in Ancient Indian Theory and Practice". *All India Reporter (Journal Section)*, pp. 2-8.

212 "Family Arrangements". *Bombay Law Reporter (Journal)*, 70, pp. 1-16.

213 "A Juridical Fabrication of Early British India: The Mahānirvāṇa-Tantra". *Zeitschrift für vergleichende Rechtswissenschaft*, 69, 2, pp. 138-181 = *ECMHL* II. 197.

214 "Hindu Law", in *Introduction to Legal Systems*, (ed. J.D.M. Derrett), Sweet and Maxwell, London, pp. 80-104.

215 "Are Separation Agreements between Spouses Valid?" *Bombay Law Reporter (Journal)*, 70, pp. 65-67.

216 "Wealth Tax, the Lucky Muslims, and the Jains". *Kerala Law Times (Journal Section)*, pp. 15-16.

217 "Adoption in the Joint Hindu Family: a Recent Supreme Court Decision and its Limits". *Bombay Law Reporter (Journal)*, 70, pp. 51-55.

218 "Mother-in-law *v.* Daughter-in-law: a Hindu Lawyer's Opinion of the Early Nineteenth Century". *Adyar Library Bulletin*, 31-32, 1967-68, pp. 531-553 = *ECMHL* II. 299.

219 "Showing a Big Bull: a Piece of Hypocrisy in the Mitākṣarā?" *Annals of the Bhandarkar Oriental Research Institute (Golden Jubilee No.)*, 48-49, pp. 45-53 = *ECMHL* I. 207.

220 "Manus marriage, Indian counterparts to Roman law, and the work of G. Mazzarella". *Ivra*, 19, pp. 94-103.

221 "'Hindu': a definition wanted for the purpose of applying a personal law". *Zeitschrift für vergleichende Rechtswissenschaft*, 70, pp. 110-128.

222 "May a spouse who is in desertion obtain a divorce on the basis of his own wrong?" *Bombay Law Reporter (Journal)*, 70, pp. 117-122; postscript, ibid., p. 152.

223 "A Maharashtrian dilemma and an error at Nagpur". *Bombay Law Reporter (Journal)*, 70, pp. 148-150.

224 "A new treatise on the nature and sources of the Dharmaśāstra". *Purāṇa*, X, 1, pp. 77-94.

225 "Two notes on Megasthenes' Indika". *Journal of the American Oriental Society*, 88, pp. 776-781.

226 "'Mother-in-law v. daughter-in-law': a translation of the anonymous *Svaśrū-snuṣā-dhana-saṃvāda*". *Journal of the Ganganatha Jha Research Institute*, 24, 1, pp. 261-277 = *ECMHL* II. 323; *Madras Law Journal (Journal)*, II, pp. 41-50.

227 "The Concept of Property in ancient Indian theory and practice". (*Rijksuniversiteit Groningen. Mededelingen van het Rechtshistorisch Instituut, Nr.7)*, Groningen, Faculty of Law, pp. 15 ff.

1969

228 "Comments (on legislative proposals) with reference to Hindu law". *East African Law Review*, 5, pp. 21-53.

229 "'Quid possit antiquitas nostris legibus abrogare?' The role of the jurist in ancient Indian law". *Mélanges Macqueron* (Aix en Provence), pp. 215-224 = *ECMHL* I. 140.

230 "'Indica pietas': a current rule derived from remote antiquity". *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, 86, pp. 37-66 = *ECMHL* IV. 142.

231 "Acquisition of joint family property and recent decisions of the Supreme Court". *Supreme Court Weekly Reporter (Journal Section)*, pp. 29-35 = *ECMHL* III. 373.

232 "The liabilities of deities to pay taxes". *Bombay Law Reporter (Journal)*, 71, pp. 38-45.

233 "Is a marriage of a person under 21 under the Special Marriage Act null and void for want of consent of the parent, or merely voidable?" *Madras Law Journal (Journal Section)*, II, pp. 1-8.

234 "Section 14 (2) of the Hindu Succession Act: a disturbing Full Bench decision from Andhra Pradesh". *Bombay Law Reporter (Journal)*, 71, pp. 62-72.

235 "Megasthenes". *Der kleine Pauly*, 3, coll. 1150-1154.

236 "Menandros 6,7". *Der kleine Pauly*, 3, coll. 1198-1199.

237 "Are separation agreements between spouses valid?" *Kerala Law Times (Journal Section)*, pp. 2-5. See also Nr. 215.

238 "Further codification and the Hindu conception of law". *Law Quarterly* (West Bengal), 6, pp. 42-58.

239 "The rights of inheritance of women. Another opinion of a Hindu lawyer of the early nineteenth century". *Adyar Library Bulletin*, 33, pp. 135-181 = *ECMHL* II. 340.

240 "Juridical ethnology: the life and work of Giuseppe Mazzarella (1868-1958)". *Zeitschrift für vergleichende Rechtswissenschaft*, 71, pp. 1-44 = *ECMHL* II. 424.

241 "Rudolph and Rudolph, *Modernity of tradition*", (review article). *Zeitschrift für vergleichende Rechtswissenschaft*, 71, pp. 89-94.

242 "Are 'marriages' with persons of neuter gender void or merely voidable?" *Bombay Law Reporter (Journal)*, 71, pp. 87-93.

243 "Acquisition of joint family property through a coparcener: let sastric and equity principles join hands!" *Bombay Law Reporter (Journal)*, 71, pp. 75-81 = *ECMHL* III. 365.

244 "Taxation and Muslim Marumakkattayam families". *Kerala Law Times (Journal Section)*, p. 51.

245 "Foreword to K.A.A. Quamoruddin, *Benami Transfers in India and Pakistan*". Dacca, Paramount Publishers.

246 "India: 23. Legal System". *Encyclopaedia Americana*, 14.

1970

247 "The relation between social and economic development of society and the development of law: Hindu law in India". *All India Reporter (Journal Section)*, pp. 1-5.

248 "Hindus and Hindu Law in Kenya". *East African Law Journal*, VI, 2, pp. 159-162.

249 "Greece and India again: the Jaimini-Aśvamedha, the Alexander Romance and the Gospels". *Zeitschrift für Religions- und Geistesgeschichte*, 22, pp. 19-44.

250 "If a Christian woman marries a Hindu solely in a Hindu ceremony of marriage, is she entitled to an order for maintenance under S. 488 of the Criminal Procedure Code?" *Kerala Law Times (Journal Section)*, pp. 2-9; *Madras Law Journal (Journal Section)*, I, pp. 1-8.

251 "The Indian subcontinent under European influence". *Bibliographical introduction to legal history and ethnology*, (Section E/8 in J. Gilissen, ed.), Brussels.

252 *A critique of modern Hindu law*. Bombay, N.M. Tripathi.

253 "The pious obligation of the Hindu son. A propos of a judicial attack on the institution". *Kerala Law Times (Journal Section)*, pp. 59-61.

254 "A Hindu judge's animadversions on Muslim polygamy".*Bombay Law Reporter (Journal)*, 72, 2, pp. 61-63.

255 "Can a Christian be a member of a Hindu coparcenary?" *Madras Law Journal (Journal Section)*, 2, pp. 1-8.

256 "Andhra Pradesh". *Encyclopedia Britannica*, 1, p. 903.

257 "Chalukya". *Encyclopedia Britannica*, 5, p. 244.

258 "Deccan". *Encyclopedia Britannica*, 7, p. 155.

259 "Gangas, Western". *Encyclopedia Britannica*, 9, p. 1131.

260 "Hoysala". *Encyclopedia Britannica*, 11, p. 798.

261 "Indian Law". *Encyclopedia Britannica*, 12, pp. 103-107.

262 "Kalinga". *Encyclopedia Britannica*, 13, p. 193.

263 "Pallava". *Encyclopedia Britannica*, 17, p. 182.

264 "Pandya". *Encyclopedia Britannica*, 17, p. 221.

265 "Rashtrakuta". *Encyclopedia Britannica*, 18, pp. 1173-1174.

266 "Vijayanagar". *Encyclopedia Britannica*, 23, p. 11.

1971

267 "Section 14 of the Hindu Succession Act, 1956, and a recent Supreme Court decision". *Bombay Law Reporter (Journal)*, 73, pp. 50-54 = *ECMHL* IV. 219.

268 "Adoption and relation back: the position in 1971". *Bombay Law Reporter (Journal)*, 73, 4, pp. 31-34 = *ECMHL* III. 159.

269 "Legal education in India and the future of Hindu Law", in *G.V. Pandit Felicitations Volume*, Poona.

270 "A note on Kunji Thomman v. Meenakshi A.I.R. 1970, Ker.284". *Kerala Law Times (Journal Section)*, pp. 25-26.

271 "Tradition in modern India, the evidence of Indian law", in *Change and the persistence of tradition in India* (Michigan Papers on South and Southeast Asia), Michigan, pp. 17-34

272 "The Supreme Court and acquisition of joint family property. The latest developments". *Supreme Court Weekly Reporter (Journal Section)*, 1, pp. 7-10.

273 "Two inscriptions concerning the status of Kammālas and the application of Dharmaśāstra", in *K.A. Nilakanta Sastri Commemoration Volume*, Madras, pp. 32-55 = *ECMHL* I. 86.

274 "An inscription dated 1584 concerning reform of a math", in *P.B. Desai Commemoration Volume*, Dharwar.

275 "Foreword and Appendix D to H. Chatterjee, *The law of debt in ancient India*". Calcutta, Sanskrit College.

276 "Comments on the 'Working Paper'", in *Report, essays and review of all-India Seminar on comparative study of political theories (June 1970)*, (G.C. Arole, ed.), Poona, pp. 47-50.

277 "A want of legal history in the Supreme Court". *Madras Law Journal (Journal Section)*, 1, pp. 39-45 = *ECMHL* IV.1.

278 "A Hindu law miscellany, 1971". *Bombay Law Reporter (Journal)*, 73, pp. 78-83 = *ECMHL* IV. 224.

1972

279 "Must a minor wait until majority before questioning an unfair partition made by his father?" *Bombay Law Reporter (Journal)*, 74, pp. 73-76.

280 "The Native Converts' Marriage Dissolution Act, 1866: should it be abolished?" *Bombay Law Reporter (Journal)*, 74, pp. 16-23 = *ECMHL* IV. 53.

281 "The tenure of widows who are granted land for their maintenance". *Kerala Law Times (Journal Section)*, pp. 33-34.

282 "Crumbs from the table: the Christian child's plight". *Kerala Law Times (Journal Section)*, pp. 39-41.

283 "An uncle's funeral expenses: a bone of contention". *Kerala Law Times (Journal Section)*, pp. 45-47.

284 "'Every valley shall be exalted': borrowings from Isaiah in ancient India?" *Zeitschrift für Religions- und Geistesgeschichte*, XXIV, 2, pp. 153-155.

285 "Adoption, the whole hog". *Bombay Law Reporter (Journal)*, 74, pp. 97-99 = *ECMHL* III. 164.

286 "The testamentary capacity of a sole surviving coparcener and the rights of widows". *Bombay Law Reporter (Journal)*, 74, pp. 123-125 = *ECMHL* IV. 242.

287 "Brit.jajmani and 'cultural continuity'". *Allahabad Law Journal (Journal Section)*, pp. XLV-XLVI.

288 "Common sense in Hindu law: a splendid decision from Allahabad". *Kerala Law Times (Journal Section)*, pp. 89-92.

289 "Some comments on the Hoysaḷa Dynasty", in *The Hoysaḷa Dynasty*, (B.Sheik Ali, ed.), Mysore, University of Mysore, pp. 17-19.

1973

290 "Hindu Empires". *Recueils de la Société Jean Bodin*, 31 (Les Grands Empires), pp. 565-596 = *ECMHL* I. 1.

291 *The classical law of India*, (An edited and augmented translation of R. Lingat, *Les sources du droit*). (Center for South and South East Asian Studies Series), Berkeley etc., University of California Press.

292 "Structure and Divisions of the Law: Hindu Law",(jointly with T.K.K. Iyer), in *International Encyclopedia of Comparative Law*, (K. Zweigert, V. Drobnig, ed.), II, Hamburg, pp. 143-156.

293 *History of Indian Law (Dharmaśāstra)*, (B. Spuler, ed.), in *Handbuch der Orientalistik*, (J. Gonda, ed.), II (*Indien, Sektion: Geschichte)*, Leiden/ Cologne, E. J.Brill.

294 *Dharmaśāstra and Juridical Literature,* (J. Gonda, ed.), in *History of Indian Literature,* IV, 1, Wiesbaden, Otto Harrassowitz.

295 "The Hindu Law of Inheritance (Amendment)Act, 1929". *Madras Law Journal (Journal Section),* 1, pp. 46-48.

296 "Reunion in the Hindu family and an unexpected dictum from Orissa". *Bombay Law Reporter (Journal),* 75, pp. 15-16.

297 "Hindu matrimonial freedom, child marriages, and Muslim divorce reform: some notes". *Bombay Law Reporter (Journal),* 75, pp. 29-34 = *ECMHL* IV. 105.

298 "Section 14 of the Hindu Succession Act once again". *Kerala Law Times (Journal Section),* pp. 19-22.

299 "Section 14 of the Hindu Succession Act yet again". *Kerala Law Times (Journal Section),* p. 81.

300 "Two extraordinary cases from Allahabad". *Kerala Law Times (Journal Section),* pp. 83-85.

301 "Luíz da Cunha Gonçalves (1875-1956): jurist, comparative lawyer and orientalist". *Banaras Law Journal,* 9, pp. 114-153.

302 "A Hindu law miscellany, 1972-3". *Bombay Law Reporter (Journal),* 75, pp. 89-93.

303 "Examples of freedom of religion in modern India". *Law Quarterly,* (Indian Law Institute, W. Bengal State Unit), X, 4, pp. 282-292.

304 "Birth control and the intended abolition of the Hindu joint-family". *Lawasia,* IV, 2, pp. 155-168 = *ECMHL* III. 380.

1974

305 "Luíz da Cunha Gonçalves (1875-1956): jurist, comparative lawyer and orientalist". *Zeitschrift für vergleichende Rechtswissenschaft,* 74, 1, pp. 1-33 = *ECMHL* II. 469; see also Nr. 301 (longer version).

306 "Modes of sannyāsīs and the reform of a South Indian Maṭha carried out in 1584". *Journal of the American Oriental Society*, 94, 1, pp. 65-72 = *ECMHL* I. 111.

307 "Law reform in Kerala". *Kerala Law Times (Journal Section)*, pp. 2-6.

308 "Testamentary contracts and an opportunity for Indian law". *Bombay Law Reporter (Journal)*, 76, pp. 1-7 = *ECMHL* IV. 285.

309 "A co-parcener's wife's jeopardy". *Bombay Law Reporter (Journal)*, 76, pp. 9-12 = *ECMHL* IV. 138.

310 "Suretyship in India", in *Les Sûretés Personnelles, Recueils de la Société Jean Bodin*, 28, pp. 389-421 = *ECMHL* I. 227.

311 "Hindu judicial administration in pre-British times and its lesson for today" (with G. Smith). *Hindutva*, V, 9, pp. 22-31.

312 "The personal law of Syrian Christians in Tamilnad". *Madras Law Journal (Journal Section)*, 2, pp. 44-45 = *ECMHL* IV. 246.

313 "An intestate's daughter's marriage expenses". *Madras Law Journal (Journal Section)*, 2, pp. 26-28 = *ECMHL* IV. 199.

314 "Ghosts at large: the mother-in-law's adoption". *Bombay Law Reporter (Journal)*, 76, pp. 16-17 = *ECMHL* III. 167.

315 "The runaway spouse and the Indian Divorce Act". *Kerala Law Times (Journal Section)*, pp. 53-54 = *ECMHL* IV. 115.

316 "The anonymous Svatva-vicāra: a legal study by a seventeenth-century logician", in *Charu Deva Shastri Felicitation Volume*, Delhi, pp. 605-611 = *ECMHL* I. 358.

317 "Nīvī", in *Acharya Dr. Vishva Bandhu Commemoration Volume*, 1 (= *Vishveshvaranand Indological Journal*, XII, 1-2), Hoshiarpur, pp. 89-95.

1975

318 *Bhāruci's Commentary on the Manusmṛti*. Vol.I: *Introduction and Text;* Vol.II: *Translation*. Wiesbaden, Franz Steiner Verlag.

319 "Social and political thought and institutions", in *A cultural history of India,* (A.L. Basham, ed.), Oxford, Clarendon Press, ch. 11, pp. 124-140.

320 "The Indian civil code or code of family law: practical propositions", in *Readings in Uniform Civil Code,* (N. Khodie, ed.), Thacker & Co.

321 "Hindu judicial administration in pre-British times and its lesson for today" (with G. Smith). *Journal of the American Oriental Society,* 95, 3, pp. 417-423; see also Nr. 311.

322 "The personal law of Syrian Christians in Tamilnad". *Kerala Law Times (Journal Section),* pp. 3-4; see also Nr. 312.

323 "Matrimonial freedom: a step 'forward' in Bombay". *Bombay Law Reporter (Journal),* 77, pp. 8-10 = *ECMHL* IV. 112.

324 "'Marry in haste: repent at leisure': a Kerala variation on an old theme". *Kerala Law Times (Journal Section),* pp. 11-13 = *ECMHL* IV. 117.

325 "Minority in the Indian Subcontinent", in *L'Enfant, Recueils de la Société Jean Bodin,* (J. Gilissen, ed.), 35, pp. 395-457 = *ECMHL* IV. 292.

326 "Cross-communal illegitimates". *Kerala Law Times (Journal Section),* p. 15 = *ECMHL* IV. 248.

327 *Essays in Classical and Modern Hindu Law*. Vol.1, Leiden, Brill.

328 "Christian Hindus and Hindu Christians: a puzzle for the lawyer". *Kerala Law Times (Journal Section),* pp. 31-32 = *ECMHL* IV. 211.

329 "An original vyavasthā in the field of vyavahāra: scholars at work about the beginning of the last century". *Adyar Library Bulletin,* 39, pp. 43-64 = *ECMHL* II. 277.

330 "Reform of Indian marriage law: a comment on debates of 1974-75". *Journal of the Indian Law Institute,* XVII, 2, pp. 177-198.

1976

331 "Rājadharma", in *Symposium on the work of L. Dumont,* (R. Nicholas, ed.), *Journal of Asian Studies,* 35, 4, pp. 597-609.

332 "Hindu law", in *International Encyclopedia of Comparative Law,* (F.H.Lawson, ed.), VI, 2, Hamburg, Max-Planck Institut, pp. 108-114.

333 "The Hindu conception of law", in *International Encyclopedia of Comparative Law,* (R.David, ed.), II, 1, Hamburg, pp. 108-119.

334 "Foreword to N. Subrahmanian *The Hindu tripod and other essays*". Madurai, Koodal Publishers.

335 "Legal science during the last century: India", in *Inchieste di diritto comparato,* (M. Rotondi, ed.), 6, *La Scienza del diritto nell'ultimo secolo,* Padua, CEDAM, pp. 413-435.

336 "The roles of anthropology and law in development", in *What we can do for each other,* (G.Cochrane, ed.), Amsterdam, B.R.Grüner, pp. 43-57.

337 "Muslim ex-wives: a note of Caution". *Kerala Law Times (Journal Section),* pp. 33-35.

338 "Sociology and family law in India: the problem of the Hindu marriage", in *Main currents in Indian sociology,* (Giri R.Gupta, ed.), 2, *Family and Social Change in modern India,* New Delhi, Vikas, pp. 47-61.

339 "Section 14 of the Hindu Succession Act: a gratifying about-face in Madras". *Supreme Court Journal (Journal Section)*, 1, pp. 51-55 = *ECMHL* IV. 236; also *Kerala Law Times (Journal Section)*, pp. 56-59.

340 "Hemācārya's *Arhannīti*: an original Jaina juridical work of the middle ages". *Annals of the Bhandarkar Oriental Research Institute*, 57, pp. 1-21 = *ECMHL* IV. 394.

341 "*Tīrita* and *anuśiṣṭa* apropos of Manu 9.233". *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, 125, 2, pp. 312-318.

1977

342 "Legal material in a religious manual: the Sanatkumāra-saṃhitā". *Zeitschrift für vergleichende Rechtswissenschaft*, 76, 1, pp. 34-53 = *ECMHL* IV. 359.

343 *Essays in Classical and Modern Hindu Law*. Vol. 2, Leiden, Brill.

344 "Anantarāma's defence of suttee: the Sahānumaraṇa-viveka". *Our Heritage*, Special No., Sanskrit College 150th Anniversary Vol., (1980), pp. 47-76.

345 "Avalokanīyāni in Tamil guise: the Ācārakkovai". *Bharata Manisha*, II, 4, pp. 13-26 = *ECMHL* IV. 380.

346 "Examples of freedom of religion in modern India". *Contributions to Asian Studies*, 10, pp. 42-51.

347 "Some current problems in maintenance". *Bombay Law Reporter (Journal)*, 79, pp. 4-5; also *Kerala Law Times (Journal Section)*, pp. 11-12.

348 "Lawyers as leaders", in *Leadership in South Asia*, (B.N.Pandey, ed.), Delhi, Vikas, pp. 55-72.

349 "Hindu medicine", in *Dictionary of medical ethics*, (A.S.Duncan and G.R.Dunstan, ed.), London, Darton, Longman and Todd.

350 "Duty in ancient Indian law", in *Sri Ghanshyam Das Birla 80th Birthday Commemoration Volume*, Pilani, Rajasthan, pp. 446-480.

351 "'Must' and 'ought': problems of translation in Sanskritic Hindu law", in *Language and Thought: Anthropological Issues*, (W.C.Mc Cormack and S.A.Wurm, ed.), The Hague, Mouton, pp. 251-259 = *ECMHL* IV. 415.

352 "Foreword to Om Prakash *Political Ideas in the Purāṇas*". Allahabad, Panchanada.

353 "An aspect of the arranged marriage in dharmaśāstra". *Law Quarterly* (Calcutta), 14, 2, pp. 109-122.

354 "An aspect of the arranged marriage in dharmaśāstra". *Annals of the Bhandarkar Oriental Research Institute*, Diamond Jubilee Vol., 1977-78, pp. 107-120; see also Nr. 353.

1978

355 *The Death of a Marriage Law*. New Delhi, Vikas.

356 *Essays in Classical and Modern Hindu Law*. Vol. 3, Leiden, Brill.

357 *The Concept of Duty in South Asia*. Edited (with W.D.O'Flaherty), New Delhi, Vikas, and London, SOAS.

358 "The concept of duty in ancient Indian jurisprudence: the problem of ascertainment", in *The Concept of Duty in South Asia*, (J.D.M. Derrett and W.D.O'Flaherty, ed.), New Delhi, Vikas, and London, SOAS, pp. 18-65; see also Nr. 350 (shorter version).

359 "Emergency and preventive detention: a question as to the Courts' proper function", in *Rule, Protest, Identity: Aspects of Modern South Asia* (D. Taylor and P. Robb, ed.),(Collected Papers on South Asia Nr.1), London, Curzon Press, pp. 83-119.

360 "Landmarks in family law in 1977 and a digression". *Kerala Law Times (Journal Section)*, pp. 13-16.

361 "Heiress's claims for maintenance". *Kerala Law Times (Journal Section)*, p. 25.

362 "Foreword to R. Nagaswamy *Studies in Ancient Tamil Law and Society*". Madras, Tamilnadu State Department of Archaeology.

363 "Ancient Indian 'nonsense' vindicated". *Journal of the American Oriental Society*, 98, 1, pp. 100-106.

364 *Essays in Classical and Modern Hindu Law*. Vol.4, Leiden, Brill.

365 "Some features of public law in smṛti sources". *Adyar Library Bulletin*, 42, pp. 1-31.

366 "Hindu Succession Act (XXX of 1956), section 6: a reappraisal of Rangubai v. Laxman, AIR 1966 Bom. 169". *Supreme Court Journal (Journal Section)*, 1, pp. 64-66.

367 "Lurking sex-discrimination in Hindu succession law". *Madras Law Journal (Journal Section)*, 2, pp. 45-47; also *Kerala Law Times (Journal Section)*, pp. 75-76.

368 "Hindu-Christian marriages: a reform required in Kerala". *Kerala Law Times (Journal Section)*, pp. 41-42.

369 "The Supreme Court and the Hindu Undivided Family: a Footnote". *Journal of the Indian Law Institute*, 20, pp. 463-470.

370 "The predicament of the joint family". *Indian socio-legal Journal*, 4, pp. 1-14.

1979

371 "The king's role relative to penance and a text of Yama", in *South Indian Studies*, (R. Nagaswamy, ed.), 2, Madras, S.A.H.E.R., pp. 1-7.

372 "Law", in *South Asian Bibliography*, (J.D.Pearson, ed.), Hassocks, Harvester Press, pp. 209-211.

373 "Tradition in law in India", in *Tradition and Politics in South Asia,* (R.J. Moore, ed.), New Delhi, Vikas, pp. 32-59 (with addendum at p. 16).

374 *Beiträge zu Indischem Rechtsdenken* (with G.-D.Sontheimer), in *Studien zu Nichteuropäischen Rechtstheorien,* (Th.Viehweg and R. May, ed.), 1, Wiesbaden, Franz Steiner Verlag.

375 "Nathaniel Brassey Halhed: mystic or maniac? His association with Joanna Southcott". *Annals of the Bhandarkar Oriental Research Institute,* 60, pp. 229-233.

376 "Cross-winds in matrimonial litigation". *Kerala Law Times (Journal Section),* pp. 29-32.

377 "Muslim Marumakkattayis and the Criminal Procedure Code". *Kerala Law Times (Journal Section),* pp. 37-41.

378 "Freedom of religion in India". *Kerala Law Times (Journal Section),* pp. 91-93.

1980

379 "Adattādānam: valuable Buddhist casuistry". *Indologica Taurinensia,* 7, (L. Sternbach Felicitation Issue), pp. 180-194.

380 "Scrupulousness and a Hindu-Jain contact". *Journal of the Royal Asiatic Society,* pp. 144-167.

381 "Das Dilemma des Rechts in der traditionellen Indischen Kultur ", in *Entstehung und Wandel rechtlicher Traditionen (Veröffentlichungen des Instituts für Historische Anthropologie,* 2),(H.Franke and O.Köhler, ed.), Freiburg im Breisgau, Alber Verlag, pp. 497-535.

382 "Gesetz und Moralität in orientalischen Religionen", in *Ethik der Religionen. Ein Handbuch. Primitive, Hinduismus, Buddhismus, Islam, Alter Orient,* (C.H.Ratschow, ed.), Stuttgart etc., Verlag W.Kohlhammer, pp. 206-256.

383 "Unity in diversity: the Hindu experience". *Bharata Manisha Quarterly*, V, 1, pp. 21-36.

384 "Memoir of P.V.Kane", in *Memoirs of Dr.P.V.Kane*, (S.B.Velankar, ed.), Bombay, Devavāṇī mandiram, pp. 6-9.

385 "*Mṛṣā-vāda-virati*: a piece of Buddhist casuistry". *Vishveshvaranand Indological Journal*, 18, (K.V. Sarma Felicitation Vol.), pp. 277-284.

386 "Dr. St.John, a civil lawyer in the Indies". *Tijdschrift voor Rechtsgeschiendenis*, 47, pp. 243-257.

387 "Succession by male issue: a conflict between the Hindu Succession Act and the demands of the Revenue". *Banaras Law Journal*, 14, (1978), pp. 119-124.

388 "An error in the Madras High Court". *Kerala Law Times (Journal Section)*, pp. 115-117.

389 "Privileged lies". *Adyar Library Bulletin*, 44-45, (K.Kunjunni Raja Felicitation Vol.), 1980-81, pp. 285-292.

1981

390 "Partition and a father's powers". *Kerala Law Times (Journal Section)*, pp. 2-4.

391 "When is an 'own wrong' not a wrong?". *Madras Law Journal (Journal Section)*, 1, pp. 1-4.

392 "Forbidden occupations in *smṛti* and their aftermath". *Ludwik Sternbach Felicitation Volume*, Lucknow, Akhila Bharatiya Sanskrit Parishad, pp. 189-197.

393 "How to get round communal reservations". *Kerala Law Times (Journal Section)*, pp. 65-67.

394 "The Gandharva Marriage and the Supreme Court". *Kerala Law Times (Journal Section)*, pp. 3-4.

395 "Divorce at the petition of the wife at Hindu law". *Jewish Law Annual*, 4, pp. 232-249.

396 "A Bombay experiment in the law of Adoption". *Madras Law Journal (Journal Section)*, 2, pp. 1-3.

1982

397 "Nullity of Marriage and change of religion". *Kerala Law Times (Journal Section)*, pp. 31-33.

398 "The judicial Panchayat: The Future of an ancient indian rural Institution", in *Les Communautés Rurales, Recueils de la Société Jean Bodin*, 42, pp. 131-141.

REVIEWS

1951

1 R.Schwab: La Renaissance orientale (Paris, 1950). *Journal of the Royal Asiatic Society,* pp. 222-223.

2 P.V.Kane: Hindu Customs and Modern Law (Bombay, 1950). *Law Quarterly Review,* 67, 416-417.

1953

3 S.Srikantha Sastri: Early Gangas of Talakad (Bangalore, 1952). *Journal of the Royal Asiatic Society,* pp. 168-169.

4 M.D.Manek: Handbook of Hindu Law, 7th edn. (Bombay, 1952). *Law Quarterly Review,* 69, pp. 399-401.

5 V.N.Subramanya Iyer: Hindu Law including Marumakkathayam Law (Ernakulam, 1952). *Law Quarterly Review,* 69, pp. 399-401.

1955

6 N.C.Sen-Gupta: Evolution of Ancient Indian Law (London/Calcutta, 1953). *Bulletin of the School of Oriental and African Studies,* p.17.

7 V.T.Gune: The Judicial System of the Marathas (Poona, 1953). *Journal of the Royal Asiatic Society,* pp. 89-90.

1956

8 C.H.Alexandrowicz, ed.: Indian Year Books of International Affairs, 2 (1953), 3 (1954) (Madras University). *Law Quarterly Review,* 72, pp. 435-436.

9 N.C.Sen-Gupta: Evolution of Ancient Indian Law (London/Calcutta, 1953). *Law Quarterly Review,* 72, pp. 437-439.

10 K.A.Nilakanta Sastri: A History of South India from Prehistoric Times to the Fall of Vijayanagar (London, 1955). *Journal of the Royal Asiatic Society*, pp. 250-251.

11 K.A.Nilakanta Sastri: The Cōlas (Madras, 1955). *Journal of the Royal Asiatic Society*, pp. 250-251.

1957

12 V.B.Kher: Indian Trade Union Law (Bombay, 1954). *Law Quarterly Review*, 73, pp. 272-273.

13 G.D.Patel: The Indian Land Problem and Legislation (Bombay, 1954). *Law Quarterly Review*, 73, pp. 272-273.

14 C.S.Subramania Ayyar: Planning of the Indian Welfare State (Madras, 1954). *Law Quarterly Review*, 73, pp. 272-273.

15 T.V.Mahalingam: South Indian Polity (Madras, 1955). *Journal of the Royal Asiatic Society*, pp. 119-120.

16 R.Lingat: Les régimes matrimoniaux du Sud-Est de l'Asie (Saigon, 1955). *Journal of the Royal Asiatic Society*, pp. 238-240.

17 L.Rocher, ed. tr.: Vācaspati Miśra: Vyavahāracintāmani (Gent, 1956). *Journal of the Royal Asiatic Society*, pp. 262-264.

1958

18 J.Wicki: Die Schrift des P.Gonçalo Fernandes S.J. über die Brahmanen und Dharma-Sāstra (Madura, 1616). Eingeleitet und inhaltlich wiedergegeben (Münster Westf., 1957). *Bulletin of the School of Oriental and African Studies*, 21, pp. 213-214.

19 K.D.Swaminathan: The Nāyakas of Ikkēri (Madras, 1957). *Bulletin of the School of Oriental and African Studies*, 21, pp. 647-648.

20 S.K.Maity: Economic Life of Northern India in the Gupta Period (c. A.D. 300-550) (Calcutta, 1957). *Journal of the Royal Asiatic Society*, pp. 210-211.

1959

21 J.Gonda: Some Observations on the Relations between Gods and 'Powers' in the Veda à propos of the Phrase sūnuḥ sahasaḥ (The Hague, 1957). *Bulletin of the School of Oriental and African Studies,* 22, p. 193.

22 J.C.Heesterman: The ancient Indian royal Consecration: The Rājasūya described according to the Yajus texts and annoted (The Hague, 1957). *Bulletin of the School of Oriental and African Studies,* 22, p. 194.

23 K.M.Kapadia: Marriage and Family in India, 2d edn. (Bombay, 1958). *Bulletin of the School of Oriental and African Studies,* 22, p. 169.

24 S.Chattopadhyaya: Early History of North India from the Fall of the Mauryas to the Death of Harṣa (c. 200 B.C.- A.D. 650) (Calcutta, 1958). *Journal of the American Oriental Society,* 79, p. 254.

25 B.A.Saletore: India's Diplomatic Relations with the West (Bombay, 1958). *Journal of the American Oriental Society,* 79, p. 129.

1960

26 P.V.Kane: History of Dharmaśāstra, V, pt.1 (Poona, 1958). *Journal of the Royal Asiatic Society,* pp. 193-194.

27 R.S.Sharma: Śūdras in Ancient India (Benares etc., 1958). *Journal of the Royal Asiatic Society,* pp. 194-195.

1961

28 M.C.Setalvad: The common Law in India (London, 1960). *International and Comparative Law Quarterly,* 10, p. 206.

29 B.Schlerath: Das Königtum im Rig- und Atharvaveda (Wiesbaden, 1960). *Journal of the American Oriental Society,* 81, pp. 143-144.

30 W.Ruben, ed.: Die ökonomische und soziale Entwicklung Indiens. Sowjetische Beiträge zur Indischen Geschichte I (Berlin, 1959). *Journal of the American Oriental Society,* 81, pp. 144-145.

31 H.Losch: Rājadharma, Einsetzung und Aufgabenkreis des Königs im Lichte der Purāṇa's (Bonn, 1959). *Purāna*, 3, pp. 184-188; also *Journal of the Royal Asiatic Society*, pp. 144-145; also *Zeitschrift für vergleichende Rechtswissenschaft*, 63, p. 240.

32 R.S.Sharma: Aspect of Political Ideas and Institutions in ancient India (Delhi etc., 1959). *Journal of the Royal Asiatic Society*, pp. 154-155.

1962

33 R.L.Chaudhary: Hindu Woman's Right to Property (Past and Present) (Calcutta, 1961). *Zeitschrift für vergleichende Rechtswissenschaft*, 64, p. 235.

34 M.H.Aung: Burmese Law Tales (London, 1962). *Journal of the Royal Asiatic Society*, p. 149.

35 S.C.Banerji: Dharmasūtras: A Study in their Origin and Development (Calcutta, 1962). *Journal of the American Oriental Society*, 82, pp. 579-580.

36 J.Minattur: Freedom of the Press in India. Constitutional provisions and their application (The Hague, 1961). *Law Library Journal*, p. 263.

37 S.V.Gupte: Hindu Law of Marriage (Bombay, 1961). *Law Quarterly Review*, 78, pp. 601-603.

38 S.A.Wolpert: Tilak and Gokhale; Revolution and Reform in the Making of modern India (Berkeley, 1962). *Journal of Asian Studies*, 1962/3, pp. 231-233.

1963

39 M.H.Aung: Burmese Law Tales (London, 1962). *Orientalistische Literaturzeitung*, 58, pp. 391-394.

40 R.M.Das: Women in Manu and his seven Commentators (Varanasi, 1962). *Journal of the Royal Asiatic Society*, pp. 108-109; also *Bulletin of the School of Oriental and African Studies*, 26, p. 442.

1964

41 S.C.Banerji: Dharmasūtras: A Study in their Origin and Development (Calcutta, 1962). *Zeitschrift für vergleichende Rechtswissenschaft*, 66, pp. 203-206.

42 P.V.Kane: History of Dharmaśāstra (ancient and mediaeval religious and civil Law in India), V, pt.2 (Poona, 1962). *Bulletin of the School of Oriental and African Studies*, 27, pp. 459-462.

43 C.Drekmeier: Kingship and Community in early India (Stanford, 1962). *Bulletin of the School of Oriental and African Studies*, 27, pp. 189-191.

44 U.Thakur: The History of Suicide in India: An Introduction (Delhi, 1963). *Bulletin of the School of Oriental and African Studies*, 27, pp. 188-189.

45 M.J.Sethna: Contributions to Synthetic Jurisprudence (Bombay, 1962). *Law Quarterly Review*, 80, pp. 293-296.

46 S.V.Gupte: Hindu Law of Succession (Bombay, 1963). *Law Quarterly Review*, 80, pp. 296-298.

47 D.V.Chitaley, ed.: The Transfer of Property Act (Nagpur, 1962). *Law Quarterly Review*, 80, pp. 448-451.

48 Sri D.F.Mulla, ed.: The Indian Registration Act, 6th edn. (Bombay, 1963). *Law Quarterly Review*, 80, pp. 448-451.

49 G.S.Dikshit: Local Self-Government in mediaeval Karnataka (Dharwar, 1964). *Bulletin of the School of Oriental and African Studies*, 27, pp. 638-640.

50 P.V.Deolalkar: The Hindu Marriage Act, 1955 (Nasik, 1959). *Zeitschrift für vergleichende Rechtswissenschaft*, 66, pp. 200-203.

1965

51 J.W.Spellman : Political Theory of ancient India: A Study of Kingship from the earliest Times to circa A.D. 300 (Oxford, 1964). *Bulletin of the School of Oriental and African Studies,* 28, pp. 170-172.

52 R.A.Jairazbhoy: Foreign Influence in Ancient India (London, 1964). *Bulletin of the School of Oriental and African Studies,* 28, pp. 404-406.

53 R.K.Soonavala: A Treatise on the Law relating to Bribery and Corruption (Bombay, 1964). *Modern Law Review,* 28, pp. 501-505.

54 D. Gopalakrishna Sastri: The Law of Sedition in India (Bombay, 1964). *Modern Law Review,* 28, pp. 501-505.

55 T.K.Banerjee: Background to indian criminal Law (Calcutta, 1963). *Modern Law Review,* 28, pp. 501-505.

56 T.V.Viswanatha: Proceedings of the Seminar (Madras, 1963). *Modern Law Review,* 28, pp. 501-505.

57 R.N.Spann, ed.: Some Aspects of Indian Law today (London, 1964). *Bulletin of the School of Oriental and African Studies,* 28, pp. 676-677.

58 V.Krishnamacharya, ed.: Visnusmrti, with the Commentary Keśava-vaijayantī of Nandapandita (Adyar, 1965). *Bulletin of the School of Oriental and African Studies,* 28, pp. 643-644.

59 H.Lüders: Mathurā Inscriptions (Göttingen, 1961). *Adyar Library Bulletin,* 29, pp. 266-269.

60 L.Renou: Études Védiques et Pāṇinéennes, tom.XI (Paris, 1963). *Bulletin of the School of Oriental and African Studies,* 28, pp. 165-167.

61 C.Tiwari: Sūdras in Manu (Delhi etc., 1963). *Bulletin of the School of Oriental and African Studies,* 28, p. 477.

1966

62 R.C.Nigam: Law of Crimes in India I (Bombay, 1965). *Pacific Affairs*, 39, 1-2, pp.203-206.

63 N.S.Marsh, ed.: Some Aspects of Indian Law today (London, 1964). *Zeitschrift für vergleichende Rechtswissenschaft*, 68, pp.248-251.

64 L.Sternbach: Juridical Studies in Ancient Indian Law, Part I (Delhi, 1965). *Journal of Asian Studies*, 26, 1966/67, pp.154-155; see also Nr.62.

1967

65 L.Sternbach: Juridical Studies in Ancient Indian Law, Part I (Delhi, 1965). *Zeitschrift für vergleichende Rechtswissenschaft*, 69, pp.249-250.

66 L.Sternbach: Juridical Studies in Ancient Indian Law, Part I (Delhi, 1965). *Journal of the Royal Asiatic Society*, pp. 47-48; also *Journal of the American Oriental Society*, 87, pp. 103-104; see also Nrs. 64 and 65.

67 C.Tiwari: Śūdras in Manu (Delhi etc., 1963). *Orientalistische Literaturzeitung*, 62, pp. 288-291; see also Nr. 61.

68 N.Wagle: Society and the Time of the Buddha (Bombay, 1966). *Man N.S.*, 2, p.653.

1968

69 R.C.Nigam: Law of Crimes in India I (Bombay, 1965). *Modern Law Review*, 31, p.357; see also Nr.63.

70 B.N.Pandey: The Introduction of English Law into India: The Career of Elijah Imply in Bengal, 1774-1783 (London, 1967). *Bulletin of the School of Oriental and African Studies*, 31, pp. 167-169.

71 A.A.A.Fyzee: Cases in the Muhammadan Law of India and Pakistan (Oxford, 1965). *Modern Law Review*

72 R.Lingat: Les Sources du droit dans le système traditionel de l'Inde (Paris, The Hague, 1967). *Bulletin of the School of Oriental and African Studies,* 31, pp. 159-161; also *T'oung Pao,* 54, pp. 345-349; also *Journal of the Royal Asiatic Society,* pp.88-89.

73 M.C.Setalvad: The Role of English Law in India (Jerusalem, 1966). *Modern Law Review,* 31, pp.357-360.

74 M.Hidayatullah: Democracy in India and the Judicial Process (London, 1966). *Modern Law Review,* 31, pp.357-360.

75 G.S.Sharma, ed.: Secularism: Its Implication for Law and Life in India (Bombay, 1966). *Modern Law Review,* 31, pp.357-360.

76 A.Gledhill: Pakistan: The Development of its Laws and Constitution (London, 1967). *Bulletin of the School of Oriental and African Studies,* 31, pp.174-175.

77 M.C.Jain Kagzi: The Constitution of India, 2nd edn. (Delhi, 1967). *Journal of the Society of Public Teachers of Law.*

78 W.Ruben: Über die frühesten Stufen der Entwicklung der altindischen Śūdras (Berlin, 1965). *Orientalistische Literaturzeitung,* 63, pp. 394-397.

79 N.Wagle: Society and the Time of the Buddha (Bombay, 1966). *Journal of the Royal Asiatic Society,* pp.89-90; see also Nr.68.

1969

80 R.S.Sharma: Indian Feudalism c.300-1200 (Calcutta, 1965). *Orientalistische Literaturzeitung,* 64, pp.192-195.

81 H.W.Tambiah: Sinhala Laws and Customs (Colombo, 1968). *Zeitschrift für vergleichende Rechtswissenschaft,* 71, pp.98-100.

82 L.Sternbach: Juridical Studies in Ancient Indian Law, Pt.2 (Delhi, 1967). *Journal of the Royal Asiatic Society,* pp.88-89; also *Journal of the American Oriental Society,* 89, pp.185-187.

1970

83 R.Lingat: Les sources du droit dans le système traditionel de l'Inde (Paris, The Hague, 1967). *Journal of the American Oriental Society,* 90, pp.346-348; see also Nr. 72.

84 F.B.Tyabji: Muslim Law, 4th edn. (Bombay, 1968). *Modern Law Review,* 33, pp.474-475.

85 B.Shiva Rao, ed.: The Framing of India's Constitution (Bombay, 1968). *International and Comparative Law Quarterly,* 19, pp.19-20.

86 R.E.Frykenberg: Land Control and Social Structure in Indian History (Madison and London, 1969). *Journal of the American Oriental Society,* 90, pp.596-598.

1971

87 H.Scharfe: Untersuchungen zur Staatsrechtslehre des Kauṭilya (Wiesbaden, 1968). *Indo-Iranian Journal,* 13, pp.49-52.

88 A.R.Mukherjea: Parliamentary Procedure in India (London, 1967). *Journal of the Royal Asiatic Society,* pp.92-93.

1972

89 W.Ruben: Die gesellschaftliche Entwicklung im alten Indien,I: Die Entwicklung der Produktionsverhältnisse im alten Indien (Berlin, 1967). *Orientalistische Literaturzeitung,* 67, pp.482-485.

90 D.N.Jha: Revenue System in Post-Maurya and Gupta Times (Calcutta, 1967). *Orientalistische Literaturzeitung,* 67, pp.180-182.

1973

91 K.V.Ramesh: History of South Kanara (from the earliest Times to the Fall of Vijayanagara) (Dharwar, 1970). *Journal of the Royal Asiatic Society*, pp. 177-178.

1974

92 J.H.Dave, ed.: Manu-smṛti with nine Commentaries (Bombay, 1972). *Journal of the Royal Asiatic Society*, pp.74-75.

93 P.B.Gajendragadkar: Secularism and the Constitution of India (Bombay, 1971). *Zeitschrift für vergleichende Rechtswissenschaft*, 74, pp.212-213.

94 H.Chatterjee Sastri: The Law of Debt in Ancient India (Calcutta, 1971). *Zeitschrift für vergleichende Rechtswissenschaft*, 74, pp. 212-213.

95 W.Ruben: Die gesellschaftliche Entwicklung im alten Indien II: Die Entwicklung von Staat und Recht im alten Indien (Berlin, 1968). *Orientalistische Literaturzeitung*, 69, pp.280-282.

1976

96 L.Sternbach: Bibliography on Dharma and Artha in ancient and mediaeval India (Wiesbaden, 1973). *Journal of the Royal Asiatic Society*, pp.161-162.

97 F.László: Die Parallelversion der Manusmṛti im Bhaviṣyapurāṇa (Wiesbaden, 1971). *Orientalistische Literaturzeitung*, 71, pp. 400-403.

1977

98 V.S.Deshpande: Judicial Review of Legislation (Lucknow, 1975). *Zeitschrift für vergleichende Rechtswissenschaft*, 76, p.245.

99 S.J.Sorabjee: Law of Press Censorship in India (Bombay, 1976). *Zeitschrift für vergleichende Rechtswissenschaft,* 76, p.254.

1979

100 A.B.Creel: Dharma in Hindu Ethics (Calcutta, 1977). *Journal of the Royal Asiatic Society,* p.70.

1980

101 G.S.Sharma: Legislation and Cases on Untouchability and Scheduled Castes (Bombay, 1975). *Zeitschrift für vergleichende Rechtswissenschaft,* 79, p.238.

1981

102 B.L.Smith, ed.: Religion and the Legitimation of Power in South Asia (Leiden, 1978). *Orientalistische Literaturzeitung,* 76, pp. 592-594.

103 H.Chatterjee Sastri: The Institutes of Jīmūtavāhana (Howrah, 1978). *Zeitschrift für vergleichende Rechtswissenschaft,* 80, p.88.

104 A.Höfer: The Caste Hierarchy and the State in Nepal (Innsbruck, 1979). *Zeitschrift für vergleichende Rechtswissenschaft,* 80, p. 176.

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Queen's College Cambridge * Professor Emeritus, received Knighthood in 1960.
Specialization: Indo-Iranian historical grammar, ancient Buddhist texts from Chinese Turkistan, Iranian dialectology.
Publications: *Zoroastrian Problems in the Ninth Century books*, 1943, 2nd ed. 1971, *Khotanese Texts I-VIII*, 1957-1979.

BECHERT, Prof. Dr. Heinz, b. 1932
University of Göttingen, Seminar für Indologie und Buddhismuskunde * Professor of Indian and Buddhist Studies * Member of the "Akademie der Wissenschaften".
Specialization: Indology and Buddhist studies.
Publications: Professor Bechert is the author of many publications in the field of Buddhist and related studies.

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Government Sanskrit College, Calcutta * Professor and Head of the Department of Pāli * Visiting Professor in different Universities of Europe and Asia * Director, Indian Centre for Critical Pāli Dictionary.
Specialization: Dharmaśāstra and Mahāyāna Buddhism (Mādhyamika school).
(cont.)

Publications: *Law of debt in ancient India*, 2 vols.; *Studies in some aspects of Saṃskāras in ancient India; Critical edition of Dāyabhāga.*

CONRAD, Dr. jur. Dieter, b. 1932
University of Heidelberg, South Asia Institute, Dept. of Economics and Law * Dr. jur., MCL (Ann Arbor) * Akademischer Oberrat.
Specialization: Economics, law.
Publications: *Freiheitsrechte und Arbeitsverfassung*, Berlin, 1965; "Limitation of Amendment Procedures and the Constitutent Power", in: *Indian Yearbook of International Affairs* 15/16, 1966/67 (1970), pp. 375-430; "Von der Teilung Indiens zur Teilung Pakistans - Staatsrechtliche Aspekte", in: *Internationales Asienforum 4*, 1973, pp. 136-192.

DIWAN, Prof. Dr. Paras, b. 1925
Panjab University, Chandigarh * Professor of Laws, and Chairman, Department of Laws.
Specialization: Family law, constitutional law and private international law.
Publications: *Indian Constitutional Amendments: From First to 44th*, 5th ed., Allahabad, 1981; *Muslim Law in Modern India*, 2nd ed., Allahabad, 1981.

KÖLVER, Prof. Dr. Bernhard, b. 1938
University of Kiel * Director of the "Seminar für Orientalistik.
Specialization: Religion and ritual, dharmaśāstra.
Publications: *Textkritische und philologische Untersuchungen zur Rājatārahgiṇī des Kalhaṇa*, Wiesbaden, 1971; *Verschliffene Präfixe im Altindischen*. Wiesbaden, 1976.

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Specialization: Sanskrit philology, Hindu law.
Publications: *Ordeals in Hindu Law: the Divyatattva of Raghunandana Bhaṭṭācārya*, Delhi, 1981; *Nāradasmṛti*, edited and translated (in preparation).

ROCHER, Prof. Dr. Rosane, née Debels, b. 1937
University of Pennsylvania, Department of South Asian Regional Studies * Professor of South Asian Studies.
Specialization: Indian linguistics, historiography of linguistic and oriental studies (particularly late 18th and early 19th centuries).
Publications: "India" (A Survey of Indian Linguistics), *Current Trends in Linguistics 13:* 1975, pp. 3 - 67; *India and Indology. Selected Articles by W. Norman Brown*, Delhi, 1978; *Orientalism, Poetry, and the Millennium: The Checkered Life of Nathaniel Brassey Halhed (1751 - 183o)*, Delhi, 1981.

SAMPATH, B. N., b. 1935
Banares Hindu University * Reader in Law * Mir Hamza Hussain Saheb Muslim Law Prize winner for the year 1958 of the Mysore University * practised law in Bangalore 196o/61 * visiting research scholar to the School of Oriental and African Studies, University of London 1966/67 and to the Harvard Law School 1967/68.
Specialization: Personal laws of India, namely, Hindu, Muslim, Christian, Parsi and Jewish laws.
Publications: Several research papers in national and international journals and a monograph on "Family Law in India" published by the Law Association for Asia and the Western Pacific in their *Family Law Series, Vol. II*, 1981.

SASTRI, see CHATTERJEE

SCHWARZ, Prof. Dr. Franz Ferdinand J., b. 1934
University of Graz, Head of the Department of Classical Philology * Director of the Department of Late Graeco-Roman Literature and Lecturer of Sanskrit.
Specialization: Indo-Graeco-Romana, late antiquity, comparatistics.
Publications: *Die Nala-Legende*, Vienna, 1966; *Studitisches Mönchtum*, Graz, 1969; *Aristoteles: Metaphysik*, Stuttgart, 1974.

SONTHEIMER, Prof. Dr. Günther-Dietz, b. 1934
University of Heidelberg, South Asia Institute * Professor of Indology (History of Religion in South Asia and Indian Philosophy).
Specialization: Hindu law, dharmaśāstra, folk and scriptural religion of South Asia.
Publications: *The Joint Hindu Family. Its Evolution as a Legal Institution*, Delhi, 1977; *Birobā, Mhaskobā and Khaṇḍobā: Geschichte, Ursprung und Umwelt von pastoralen Gottheiten in Mahārāṣṭra*, Wiesbaden, 1976; ed. (together with S. Settar): *Memorial Stones. A Study of their Origins, Significance and Variety*, Dharwad/New Delhi, 1982.

VENKATARAMIAH, Justice E. S., b. 1924
Judge, Supreme Court of India, New Delhi * Formerly Professor of Law at B.M.S. Law College, Bangalore University (1963 - 1969) * Advocate General for Mysore (197o) * Judge, High Court of Karnataka (197o - 1979).

WAGLE, Prof. Dr. Narendra K., b. 1936
University of Toronto, Department of History * Professor of History.
Specialization: Ancient and medieval social history of India, medieval law and modern regional studies of India.
Publications: *Society at the Time of the Buddha*, 1966; (with A. R. Kulkarni): *Vallabha's Paraśarām Caritra: An Eighteenth Century Marāṭhā History of the Peśwās*, 1976; ed.: *Images of Maharashtra: A Regional Profile of India*, 198o.

WEZLER, Prof.. Dr. Albrecht, b. 1938

University of Hamburg, Professor at the Seminar für Kultur und Geschichte Indiens * Director General of the "Nepal Research Center" and the "Nepal-German Manuscript Preservation Project".

Specialization: Indigenous Indian grammar, cultural history, philosophy.

Publications: *Bestimmung und Angabe der Funktion von Sekundär-Suffixen durch Pāṇini*, Wiesbaden, 1975; *Die wahren 'Speiseresteesser' (Skt. vighasāśin)*, Wiesbaden, 1978.

WILHELM, Prof. Dr. Friedrich, b. 1932

University of Munich, Professor in the Institute of Indology * Visiting Professor Columbia University, New York, 1965/66 * Collège de France, Paris, 1976 * Wolfson College, Oxford, 1980/81.

Specialization: Indian history, politics, cultural relations between India and Europe.

Publications: *Politische Polemiken im Staatslehrbuch des Kauṭalya*, 1960 and numerous papers on ancient Indian politics and history; (with A. T. Embree): "History of India", in: *Fischer Weltgeschichte*, (1967 and reprints), Italian and Spanish translations.